

Public Hearing  
**STATE WATER RESOURCES CONTROL BOARD**  
STATE OF CALIFORNIA

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**Subject:** El Dorado Project Proposed by  
El Dorado County Water Agency and El Dorado Irrigation District,  
Applications 29919, 29920, 29921 and 29922,  
Petition for Partial Assignment of State Filed Application 5645

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Held in  
Bonderson Building  
Sacramento, California

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**Monday, June 14, 1993**  
**9:00 a.m.**

VOLUME I

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**A L I C E B O O K**  
CERTIFIED SHORTHAND REPORTER  
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JIM CANADAY, Environmental Specialist  
TOM LAVENDA, Engineer

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and EL DORADO IRRIGATION DISTRICT

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KIT CARSON LODGE  
CAPLES LAKE RESORT  
KIRKWOOD ASSOCIATES  
KIRKWOOD MEADOWS PUBLIC UTILITIES DISTRICT

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APPEARANCES continued

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CAPLES LAKE HOMEOWNERS ASSOCIATION  
LAKE KIRKWOOD ASSOCIATES  
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FELIX SMITH  
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representing SAVE THE AMERICAN RIVER

1 MONDAY, JUNE 14, 1993, 9:00 A.M.

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3 MR. STUBCHAER: This is the time and place for the  
4 State Water Resources Control Board hearing regarding the El  
5 Dorado Project in El Dorado County. This hearing concerns  
6 Applications 29919, 29920, 29921 and 29922, and Petition for  
7 Partial Assignment of State filed Application 5645 filed by  
8 the El Dorado County Water Agency and El Dorado Irrigation  
9 District.

10 This hearing is being held in accordance with the  
11 Notice of Public hearing dated April 14, 1993.

12 I am Jim Stubchaer, a member of the Board. I will  
13 be assisted by Barbara Katz, staff counsel; Mike  
14 Falkenstine, staff environmental specialist; Jim Canady,  
15 staff environ-mental specialist, and Tom Lavenda, staff  
16 engineer.

17 Applicants are requesting water rights to use a  
18 maximum of 33,000 acre-feet per annum from combined storage  
19 and direct diversion for domestic, municipal and irrigation  
20 uses within the El Dorado Irrigation District.

21 Stored water is presently used downstream by Pacific  
22 Gas and Electric Company to generate hydroelectric power  
23 under existing water rights issued by the State Water  
24 Resources Control Board and the Federal Energy Regulatory  
25 Commission.

26 Water stored in Silver Lake, Caples Lake and Lake  
27 Aloha is released according to scheduled currently main-  
28 tained by Pacific Gas and Electric Company.

29 Direct diversions enter the El Dorado Canal from the  
30 South Fork American River near Kyburz and from Alder Creek a  
31 few miles downstream.

32 The season of direct diversion and storage under the  
33 application is from November 1 to August 1, and is year  
34 round under the Petition for Partial Assignment. The  
35 Petition for Partial Assignment of State filed Application  
36 5645 is for the same amount of water and uses as  
37 Applications 29919, 29920, 29921 and 29922.

38 The purpose of this hearing is to afford the  
39 applicants, protestants, and interested parties an oppor-  
40 tunity to present relevant oral and written testimony and  
41 exhibits, which may assist the Board in determining whether  
42 the application and/or petition regarding the El Dorado  
43 project should be approved or denied.

44 This hearing will address the following key issues  
45 as listed in the May 14, 1993, Notice of Public hearing:

- 1           1. How will the El Dorado project be  
2 operated? What areas will be served? What  
3 beneficial uses will be served? Should there  
4 be limited among these uses?
- 5           2. Will any legal user of water be injured  
6 by the El Dorado project? Should the operation  
7 of the project be modified to prevent such  
8 injury? If so, how?
- 9           3. Is there unappropriated water available  
10 at Silver Lake, Caples Lake and Lake Aloha for  
11 the El Dorado project? What should be the  
12 maximum lake drawdown, release-operating  
13 schedules, and maximum annual amount of water  
14 withdrawn from storage in Silver Lake, Caples  
15 Lake and Lake Aloha?
- 16           4. Is there unappropriated water available  
17 in the South Fork American River and Alder  
18 Creek for the El Dorado project? What should  
19 be the maximum instantaneous rate of diversion  
20 and the maximum annual amount of water diverted  
21 from these streams?
- 22           5. Will the El Dorado project have any  
23 adverse effects on any cultural resources,  
24 recreational resources, fishery resources,  
25 wildlife resources, riparian habitat, rare and  
26 endangered species, or other public trust  
27 resources and uses? If so, what are the  
28 effects? Can the effects be avoided or  
29 mitigated to a level of non-significance by  
30 specific conditions placed in water rights  
31 permits that may be issued by the State Water  
32 Board?
- 33           6. Should bypass flows be established to  
34 protect resources and uses in the South Fork  
35 American River, Alder Creek and the streams  
36 blow Silver Lake, Caples Lake and Lake Aloha?  
37 If so, when and what should the bypass flows  
38 be?
- 39           7. Are there any water conservation or  
40 other measures that can be taken to assure that  
41 water will be diverted and used in the most  
42 efficient manner? If so, what are they?
- 43           8. Are opportunities available for reuse or  
44 reclamation of the requested water? If so,  
45 what are they?

1           9. Is the proposed use of water compatible  
2 with the Water Quality Control Plan for the  
3 Central Valley Region?

4           10. What is the projected time scheduled  
5 for perfecting water use under the El Dorado  
6 project? Within the El Dorado County planning  
7 horizon, are any changes in operation of Silver  
8 Lake, Caples Lake or Lake Aloha foreseeable?  
9 If so, what are they? Should conditions be  
10 established regarding any foreseeable  
11 reoperation of the lakes? If so, what are  
12 they?

13           11. What are the impacts of the proposed  
14 White Rock-Bray interconnection?

15           12. Is the El Dorado project in the public  
16 interest?

17           13. Is the Petition for Partial Assignment  
18 of State filed Application 5645 consistent with  
19 Water Code Section 10500, et seq.?

20           14. Should Applications 29919, 29920, 29921  
21 and 29922 be approved?

22           15. Should the Petition for Partial  
23 Assignment of State filed Application 5645 be  
24 approved? Would such approval deprive Alpine  
25 and/or Amador Counties of water necessary for  
26 development in these counties?

27           16. What terms and conditions should be  
28 included in any permits that may be issued for  
29 Applications 29919, 29920, 29921, and 29922, or  
30 the Petition for Partial Assignment of State  
31 filed Application 5645?

32           17. Is follow-up monitoring and/or  
33 reporting needed to assess any El Dorado  
34 project mitigation or terms and conditions? If  
35 so, what are the specifics of such monitoring  
36 and/or reporting requirements?

37           At the conclusion of this hearing, the record will  
38 be held open to receive written arguments and it may be  
39 held open to receive additional evidence as I might  
40 announce from time to time during the process of this  
41 hearing.

42           After the Board adopts a decision on the  
43 applications and petition, any person who believes the  
44 decision is in error will have 30 days within which to

1 submit a written petition with supporting evidence for  
2 reconsideration by the Board.

3 Alice Book, a court reporter, is present and will  
4 record the proceedings. Parties who want copies of the  
5 transcript must make their own arrangements with the court  
6 reporter.

7 At this time, I will ask Ms. Katz to cover a few  
8 procedural items and introduce staff exhibits.

9 MS. KATZ: Thank you, Mr. Stubchaer.

10 First, an announcement on the blue cards. If there  
11 are people out there who desire to make a policy statement  
12 that have not already filled out a blue card or submitted a  
13 Notice of Intent to Appear, would you please fill one out.  
14 They are on the table over there -- and hand them to Yoko  
15 Mooring -- so we know who else needs to present policy  
16 statements.

17 The first item, the Board's hearing records show  
18 that the April 14, 1993, Notice of Hearing was received by  
19 the applicants and the protestants.

20 Regarding staff exhibits. The Notice of Hearing  
21 also stated that the State Water Board staff proposed to  
22 introduce certain exhibits into evidence by reference.  
23 These exhibits are designated in the Notice of Hearing as  
24 Staff Exhibits 1 through 9.

25 In addition, the staff proposes to introduce  
26 Exhibit 10, the State Water Resources Control Board  
27 Vicinity Map for the El Dorado project hearing dated June,  
28 1993. Copies of it are available on the table next to the  
29 door, and it is also posted on the bulletin board just  
30 underneath the larger map on the left side of the bulletin  
31 board.

32 If there are no objections, I will omit reading the  
33 list of exhibits and move that the staff exhibits be  
34 admitted into evidence at this time.

35 MR. STUBCHAER: Are there any objections? If not,  
36 they are received.

37 MS. KATZ: I have two more points; one regarding the  
38 legal adequacy of the El Dorado Environmental Impact  
39 Report. The legal adequacy of El Dorado's final  
40 Environmental Impact Report is not, and I want to  
41 emphasize, is not a subject to his hearing.

42 In accordance with the California Environmental  
43 Quality Act, we must assume that the EIR is adequate and  
44 complies with CEQA until or unless the court rules  
45 otherwise. So, statements and testimony relating to the

1 legal adequacy of the EIR are not relevant and will be  
2 ruled out of order.

3 The environmental impacts of the proposed project  
4 are a subject of this hearing. Therefore, testimony  
5 relating to the data and conclusions contained in the EIR  
6 is relevant and appropriate for presentation in this  
7 hearing.

8 One final note: The modification of the water  
9 rights and FERC licenses of PGandE and SMUD is not a  
10 subject of this hearing. Statements and testimony relating  
11 to any proposed modification of PGandE's and SMUD's rights  
12 are not relevant and will be ruled out of order.

13 Thank you.

14 MR. STUBCHAER: Thank you.

15 Our order of proceeding in this hearing will be to,  
16 first, hear non-evidentiary policy statements. Such  
17 statements will be limited to a maximum of ten minutes  
18 each.

19 Next, the presentation of direct testimony including open  
20 and/or policy statements for cases in chief as provided in  
21 the Conduct of Hearing letter dated June 2, 1993, will  
22 follow.

23 Testimony will be followed by cross-examination by  
24 the other parties, Board staff and myself.

25 Opening statements in cases in chief shall be  
26 limited to a maximum of ten minutes each. Presentation of  
27 the parties' cases in chief will be limited to the time  
28 specified in the Conduct of Hearing letter.

29 Witnesses will be sworn and required to identify  
30 their written testimony as their own. Each will be given a  
31 brief period to summarize their written testimony on direct  
32 examination. The written testimony shall be treated as  
33 direct evidence in its entirety.

34 Cross-examination will be permitted on the exhibits,  
35 including the written testimony and on the oral summaries.

36 Absent extenuating circumstances, new testimony or  
37 exhibits will not be admitted.

38 Cross-examination will be limited to 20 minutes by  
39 each part. I may extend these times as outlined in the  
40 Conduct of Hearing letter.

41 Following cross-examination, there may be redirect  
42 and recross, if necessary. After all the parties have  
43 presented their cases in chief and have been cross-  
44 examinationed, rebuttal testimony may be received.

1 Oral closing or legal arguments will not be heard.  
2 Written arguments may be submitted as described in the  
3 Conduct of Hearing letter.

4 The order of presentation will be as specified in  
5 the Conduct of Hearing letter dated June 2, 1993.

6 I now invite appearances by the participants. Will  
7 those making appearances please state your name, address  
8 and whom you represent so that the court reporter can enter  
9 this information into the record.

10 First, we will ask for parties making non-  
11 evidentiary policy statements. Who is representing the  
12 City of Sacramento?

13 MR. ROBINSON: Joe Robinson, Deputy City Attorney.  
14 The City with withdrawing its protest.

15 MR. STUBCHAER: You do not want to make a policy  
16 statement?

17 MS. KATZ: Can I clarify for one moment? You are  
18 withdrawing your protest and you are not presenting any  
19 evidence or cross-examination?

20 MR. ROBINSON: That is correct.

21 MS. KATZ: Thank you.

22 MR. STUBCHAER: City of Stockton.

23 MR. ALLEN: Morris Allen, Director of Municipal  
24 Utilities, 2500 Navy Drive, Stockton, California, 95206.

25 MR. NORDSTROM: Larry Nordstrom, Park Superin-  
26 tendent, City of Stockton, 425 North El Dorado, Stockton.

27 MR. STUBCHAER: Boy Scouts of America, 49er  
28 Council.

29 MR. ODENWELLER: Dan Odenweller, 837 North Shaw  
30 Road, Stockton, California, 95213-0686.

31 MR. STUBCHAER: California Trout. Not here.  
32 Miwok Indian Tribe.

33 MS. VILLA: Joan Villa, Buena Vista Rancheria Miwok  
34 Indian Tribe. I am Tribe Administrator. The address of  
35 the tribe is P. O. Box 1152, Ione, California, 95640.

36 MR. STUBCHAER: Mr. Curtis Manning.

37 MR. MANNING: I am Curtis Manning. I live at 2107  
38 Fifth Street in Berkeley, 94710. I am representing myself.

39 MR. STUBCHAER: Thank you.

40 Are there other parties wishing to make policy  
41 statements? I have some blue cards here, Department of  
42 Water Resources.

43 MR. SOHREN: Richard Sohren, California Department  
44 of Water Resources, P. O. Box 942836, Sacramento,  
45 California, 94236-0001.

1 MR. STUBCHAER: John Upton and John Rigsby, one  
2 with the Irrigation District and one with the Water Agency.  
3 Are you going to give policy statements outside of the case  
4 in chief?

5 MR. SOMACH: Yes, if that's possible, we would like  
6 to do that up front.

7 MR. STUBCHAER: It's not part of your case in  
8 chief?

9 MR. SMITH: No, and as a matter of fact, both the  
10 statements are very brief. You can subtract it from our  
11 time, though.

12 MR. STUBCHAER: Okay. I've got a subtracting watch  
13 here.

14 MR. SMITH: We acquiesce to any subtraction.

15 MR. STUBCHAER: All right. Mr. Rigsby, would you  
16 please identify yourself.

17 MR. RIGSBY: John Rigsby, 2890 Mosquito Road,  
18 Placerville, California, 95667.

19 MR. STUBCHAER: Mr. Upton.

20 MR. UPTON: John Upton, 330 Fairlane, Placerville,  
21 California, 95667.

22 MR. STUBCHAER: Are there any others who wish to  
23 present policy statements?

24 If not, we will go to the parties who are going to  
25 present evidence.

26 Who is representing the El Dorado County Water  
27 Agency and El Dorado County Irrigation District?

28 MR. SOMACH: Mr. Stubchaer, Stuart Somach, 1755  
29 Creek Side Oaks Drive, Suite 290, Sacramento, 95833.

30 MR. STUBCHAER: Thank you.

31 MR. BARTKIEWICZ: Mr. Stubchaer, also Paul  
32 Bartkiewicz, Special Counsel to El Dorado Irrigation  
33 District, 1011 22nd Street, Sacramento.

34 MR. STUBCHAER: Pacific Gas and Electric Company.

35 MR. MOSS: Richard Moss, P. O. Box 7442, San  
36 Francisco, California, 94120.

37 MS. FARAGLIA: Annette Faraglia, 77 Beale Street,  
38 San Francisco, California, 94106.

39 MR. STUBCHAER: Sacramento Municipal Utility  
40 District.

41 MR. O'BRIEN: Kevin O'Brien, 555 Capitol Mall,  
42 Sacramento, California, 95814.

43 Mr. Stubchaer, also appearing on behalf of SMUD will  
44 be Steven Cohn of the Office of General Counsel of SMUD.

45 MR. STUBCHAER: All right, thank you.

1 Bureau of Reclamation.

2 MR. TURNER: James E. Turner, Assistant Regional  
3 Solicitor, Pacific Southwest Region, Department of the  
4 Interior, 2800 Cottage Way, Room E-2753, Sacramento,  
5 California, 95825.

6 MR. STUBCHAER: California Fish and Game.

7 MS. PETER: Ellen Peter from the California Attorney  
8 General's Office, 1515 K Street, Sacramento, 95814.

9 MR. STUBCHAER: Fish and Wildlife Service.

10 MS. NIEBAUER: Erica Niebauer, Assistant Regional  
11 Solicitor's Office of the Pacific Southwest Region, U. S.  
12 Department of the Interior, representing U. S. Fish and  
13 Wildlife Service, 2800 cottage Way, Room E-2735,  
14 Sacramento.

15 MR. STUBCHAER: Thank you.

16 California Sportfishing Protection Alliance.

17 MR. JACKSON: Michael Jackson, P. O. Box 207,  
18 Quincy, California, 95971.

19 MR. STUBCHAER: Sierra Club Legal Defense Fund.

20 MR. VOLKER: Stephen Volker, 180 Montgomery Street,  
21 Suite 1400, San Francisco, 94104.

22 Chairman Stubchaer, should I indicate the agencies  
23 or organizations that the Sierra Club Legal Defense Fund  
24 represents in this proceeding?

25 MR. STUBCHAER: Please do.

26 MR. VOLKER: They are, in addition to the Sierra  
27 Club Legal Defense Fund, the League to Save Sierra Lakes,  
28 49er Council of Boy Scouts of America, Plasse Home Owners  
29 Association, Kit Carson Lodge, Caples Lake Resort, Kirkwood  
30 Associates, Kirkwood Meadows Public Utilities District,  
31 Northern Sierra Summer Home Owners Association, East Silver  
32 Lake Improvement Association, South Silver Lake Homeowners  
33 Association, Caples Lake Homeowners Association, Lake  
34 Kirkwood Associates, Silver Lake Water Company, Plasse  
35 Resort, Alpine County, and co-counsel with Mike Jackson for  
36 California Sportfishing Protection Alliance.

37 MR. STUBCHAER: San Joaquin County Public Works.

38 San Joaquin County not present.

39 Amador County Water Resources.

40 MR. GALLERY: Mr. Stubchaer, that should just be  
41 Amador County and representing the County is Daniel  
42 Gallery, 926 J Street, Sacramento, 95814, along with co-  
43 counsel, John Hahn, County Counsel, Courthouse, 108 Court  
44 Street, Jackson, California, 95642.

45 MR. STUBCHAER: Paul Creger.

1 MR. CREGER: Paul Creger, 501 Magnolia Lane, Santa  
2 Clara, California, 95051.

3 MR. STUBCHAER: Amador County Chamber of Commerce.  
4 Not present.

5 Save the American River Association.

6 MR. SMITH: Felix Smith for Save the American River  
7 Association, P. O. Box 19464, Sacramento, California,  
8 95819.

9 MR. STUBCHAER: Friends of the River.

10 MR. JACKSON: Michael Jackson, P. O. Box 207,  
11 Quincy, California, 95970.

12 MR. STUBCHAER: El Dorado National Forest.  
13 Not present.

14 All right, now we will hear the policy statements.  
15 First is the City of Stockton, Mr. Allen.

16 MR. ALLEN: My name is Morris Allen and I am  
17 Director of Municipal Utilities for the City of Stockton,  
18 California.

19 I have been authorized and directed to appear before  
20 you to present information concerning the protest filed by  
21 the City of Stockton concerning the applications of El  
22 Dorado County Water Agency and El Dorado Irrigation  
23 District to appropriate water from Aloha, Caples and Silver  
24 Lakes, tributary to the South Fork of the American River,  
25 which is the subject of this hearing.

26 The City's policy statements will be presented in  
27 two parts with Mr. Larry Nordstrom, City Landscape  
28 Architect, providing the Board information concerning the  
29 recreational benefits of Silver Lake to the City of  
30 Stockton, which will be affected if the applications in  
31 their present form are granted by your Board.

32 The City of Stockton is directly affected by these  
33 applications for water rights because of the proximity of  
34 the City's Silver Lake Camp, which shares the recreational  
35 resources, opportunities, and attractions of Silver Lake.

36 The camp is located at the upper end of the lake,  
37 and therefore, if water levels are significantly lowered,  
38 extensive mud flats and exposed debris appear which make  
39 the area dangerous and unattractive to recreationists.

40 The City of Stockton's use of the Silver Lake family  
41 camp will be substantially and adversely affected by  
42 reduced lake levels resulting in irreversible economic and  
43 cultural losses to the City of Stockton and the many  
44 citizens who otherwise would visit and use these facilities.

45 Mr. Nordstrom will present the recreational aspects.

1 MR. NORDSTROM: Larry Nordstrom, Park Superintendent  
2 and Landscape Architect for the City of Stockton.

3 Silver Lake Camp facilities have been in operation  
4 for over 70 years as a family recreational center and  
5 educational resource. Its location in the higher  
6 elevations provides city dwellers with the unique  
7 opportunity to experience the high Sierra Mountains away  
8 from urban worries.

9 Its uniqueness is partially because of the use of  
10 Silver Lake during the summer season as an integral part of  
11 the camp activities and overall rustic experience.

12 Stockton Silver Lake Camp opened for the first time  
13 in August of 1922. The 14-acre site currently contains  
14 over 60 cabins, a lodge and various other recreational  
15 facilities.

16 The total allowed camp capacity is 229 persons, and  
17 a typical operating season runs from mid-May through mid-  
18 October.

19 The total served during the last year's 1992  
20 operating season was over 2,000 people which amounts to  
21 over 7,000 camper days with a total revenue of over  
22 \$110,000.

23 The camp's close proximity to Silver Lake provides a  
24 unique opportunity for guests to participate in various  
25 waterfront events such as the Kiwanis Fishing Derby, which  
26 has been held at the lake every year since 1955, and Silver  
27 Lake Camp fishing derbies.

28 Silver Lake Camp hosts many different organizations,  
29 promotes educational and improves social services. All age  
30 groups and ethnic groups are reached. Some of those  
31 include the San Joaquin County 4-H Club, Lincoln  
32 Presbyterian Church, Kiwanis Club, high school band camp,  
33 youth nature and science camp, family camps, Native  
34 American Indian camp, and senior citizens.

35 In closing, the lake has served as an environmental  
36 as well as a cultural resource for the Stockton Silver Lake  
37 Camp, and we are greatly concerned about disrupting the  
38 opportunities for the camp patrons to utilize this water  
39 resource, and impacts which would greatly affect the future  
40 use of our facility. Water loss from Silver Lake during  
41 the recreational season would severely disrupt Silver Lake  
42 Camp activities and cultural and social interaction as I  
43 have explained.

44 Morris would like to wrap it up.

1 MR. ALLEN: We have a number of concerns regarding  
2 the granting of these rights as requested. One is the  
3 conversion of water rights from non-consumptive changes the  
4 management philosophy of this basin.

5 Priorities per water usage will be changed due to  
6 this change in water rights classification. Consumptive  
7 water rights have a higher priority than non-consumptive as  
8 viewed by the Board.

9 The change in water rights classification will allow  
10 approval of variances to restrictions during periods of  
11 water shortages due to the higher priority of right.

12 This concern is not addressed in the EIR because it  
13 is viewed as speculative. The City of Stockton considers  
14 this concern real and valid in view of previous actions  
15 taken by this Board in emergency situations.

16 Second, while the EIR asserts that the project will  
17 have no effect on the levels of Silver Lake, the EIR  
18 presents insufficient data regarding the conditions which  
19 govern the operation of Silver Lake and resulting lake  
20 levels to verify this assertion.

21 The City of Stockton requests that if the Board  
22 decides to grant the districts a permit based upon these  
23 applications, that time specific minimum lake levels should  
24 be designated as a part of the conditions of the permit so  
25 that these levels are not allowed to recede below the point  
26 that the various recreation and other uses of Silver Lake  
27 are adversely impacted.

28 Third, there has been no agreement between  
29 EID//EDCWA and PGandE regarding the operation of Silver  
30 Lake, or the conversion, transfer or acquisition of the  
31 Company's water rights in order to facilitate the proposed  
32 appropriation of water.

33 We feel this aspect of the project should be a key  
34 element in the approval process and that without PGandE's  
35 agreement to continue to operate in a manner that would  
36 contractually protect the lake levels, all other elements  
37 of the project are without a sound basis.

38 PGandE has the ability to change its operation under  
39 its FERC License 184. The State Board does not have  
40 jurisdiction to impose conditions on FERC licenses. This  
41 includes the granting of duplicate rights of FERC project  
42 power water rights and diversion to storage.

43 Fourth, the action proposed by the El Dorado County  
44 Water Agency is contrary to law because the EIR failed to  
45 identify impacts on the water quality objective and other

1 requirements of either the Central Valley Regional Water  
2 Quality Control Plan, the Inland Surface Water Quality  
3 Plan, or the Water Quality Control Plan for salinity for  
4 the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

5 Other laws which we feel would have a bearing on the  
6 approval process for this project are the Federal Water  
7 Quality Act, the California Environmental Quality Act, the  
8 California Endangered Species Act, and the Public Trust  
9 Doctrine.

10 The EIR does not adequately address the impact of  
11 the project on these plans, or any possible conflict with  
12 the related State and Federal laws.

13 Any decision to commit the water in these lakes to  
14 downstream consumptive urban uses will inevitably lead to  
15 subordination of their recreational values to the demands  
16 of the new urban populations these would support.

17 The use and enjoyment of Silver Lake requires the  
18 maintenance of high lake levels through the summer  
19 recreational season, May through October. Application  
20 29919 requests the appropriation of 6,000 acre-feet of  
21 water at Silver Lake to be collected between November 1 and  
22 August 1, but withdrawals of the water would occur in the  
23 summer during the recreational season.

24 Any withdrawal of water which would reduce or impair  
25 lake levels during the summer recreational season would  
26 disrupt the public use and enjoyment of this invaluable  
27 scenic resource, would not best serve the public interest,  
28 would have an adverse environmental impact and would  
29 adversely affect the public trust use of the navigable  
30 lakes.

31 The City of Stockton, therefore, urges your Board  
32 not to approve the applications as submitted by the El  
33 Dorado County Water Agency and El Dorado Irrigation  
34 District.

35 MR. STUBCHAER: Thank you.

36 Mr. Odenweller for the Boy Scouts.

37 MR. ODENWELLER: Good morning, Mr. Stubchaer and  
38 staff, my name is Dan Odenweller, and I am appearing today  
39 as a member of the Board of Directors of the 49er Council  
40 of Boy Scouts of America.

41 The 49er Council of the Boy Scouts of America has  
42 obtained both the U. S. Forest Service lease and the title  
43 to a camp on Silver Lake known as Camp Minkalo. Camp  
44 Minkalo is an historical site on Silver Lake and appears on  
45 both the topographic map of the lake and as the name of a

1 trail in the area. The camp dates from 1922 and originally  
2 belonged to the Campfire Girls from whom we acquired the  
3 camp in 1991.

4 We have invested and continue to invest a  
5 considerable amount of our resources in acquiring,  
6 developing and operating this camp. We intend to develop  
7 the camp into a high adventure base for our scouting  
8 programs. As you can imagine, swimming, snorkeling,  
9 boating, fishing are significant components of this  
10 program. In addition, Camp Minkalo has drawn water  
11 for consumptive use from Silver Lake. This source of water  
12 is important to us, even though we have just put in a well  
13 to supply potable water, since it may provide a source of  
14 water for our non-potable needs, including fire fighting.

15 We wish to express our concerns regarding any  
16 changes in the water level and water level fluctuations of  
17 the lake, especially during the summer camping season, any  
18 changes in the water quality of the lake, and any changes  
19 in the recreational benefits provided by the lake.

20 These beneficial uses, which we share with a number  
21 of other users, have historically been the other principal  
22 beneficial use of this water after the PG&E hydropower  
23 project.

24 As you will hear, they provide a significant benefit  
25 to the area, and are the principal reason we invested in  
26 this resource.

27 The traditional in-basin beneficial uses of the  
28 water in these lakes, and specifically in Silver Lake,  
29 which have enjoyed a long and productive multiple use  
30 management in conjunction with PG&E's hydropower project,  
31 may be at stake.

32 Unfortunately, the lack of adequate environmental  
33 documentation for the El Dorado project makes it impossible  
34 to assess the impact of the proposed action on our existing  
35 beneficial uses. We cannot even establish if there is a  
36 change in the frequency of years during which water levels  
37 would drop and impact our water-related recreational uses.

38 We believe the El Dorado project could have  
39 significant adverse impacts on our beneficial uses of  
40 Silver Lake, which predate the proponents' applications,  
41 and since we cannot make a judgment about the effects of  
42 the proposed action based on the environmental  
43 documentation provided to date, we must ask you to proceed  
44 carefully in this matter.

1           The potential impacts to our existing beneficial  
2 uses, including the potential to harm the recreational  
3 fishery of Silver Lake, are great. Therefore, we would ask  
4 you to see that any action preserves these historical  
5 beneficial in-basin uses.

6           Thank you for the opportunity to appear on behalf of  
7 the Board of Directors of the 49er Council of the Boy  
8 Scouts of America to present this statement. We believe  
9 that all of our concerns will be adequately addressed by  
10 the other protestants, and have joined with the Sierra Club  
11 Legal Defense Council for the balance of the proceedings.

12           Thank you, again, for the opportunity to appear.

13           MR. STUBCHAER: Thank you. Has the representative  
14 of the California Trout arrived yet?

15           If not, next will be Joan Villa for the Miwok Indian  
16 Tribe.

17           MS. VILLA: I am Joan Villa and I am administrator  
18 for the Buena Vista Rancheria Miwok Indian Tribe.

19           I have a short statement I would like to make and a  
20 short comment after that.

21           To the Honorable Board Member, the Buena Vista  
22 Rancheria Miwok Indian Tribe is a federally-recognized  
23 tribal sovereign entity. The tribe resides in the oldest  
24 known continuously occupied remaining aboriginal land base  
25 in California, possibly the United States, for more than  
26 18,000 years. The land base is known as Young           , the  
27 place where the birds sleep, and is located at 2919 Jackson  
28 Valley Road, Ione, California, in Amador County.

29           The government the tribe, the descended government  
30 of the original government of the Miwok nation, is located  
31 within the boundary of central California just north of the  
32 American River, the San Joaquin River just south of Madera  
33 County, from the Washoe territory to the east, and the San  
34 Francisco Bay area to the west.

35           Therefore, the tribe has retained its aboriginal  
36 claims, including but not limited to water and mineral  
37 rights.

38           The concern of the tribe on the issue is the fact  
39 that the tribe has never been notified of the intent to  
40 modify Caples Lake, Silver Lake, Lake Aloha, and from the  
41 South Fork American River, and Alder Creek for consumptive  
42 use within the service area of El Dorado Irrigation  
43 District.

44           The first contact the tribe has had on this issue  
45 was a recent meeting of the Amador County Board of

1 Supervisors' public hearing regarding the Memorandum of  
2 Agreement between El Dorado and Amador Counties. Neither  
3 El Dorado nor Amador County took into consideration the  
4 tribe's rights and concerns in that agreement, or any issue  
5 regarding this project.

6 The tribe received a copy of the EIR final draft  
7 only after the tribe requested it from El Dorado County at  
8 that particular Board of Supervisors' meeting.

9 The EIR does not reflect any concerns of the tribe.  
10 It demonstrates the tribe had never been notified and that  
11 the only reference to Native Americans, not the tribe, was  
12 in the addendum statement that the County could possibly do  
13 a study should the White Rock project begin.

14 The intent of this tribe is to require all laws,  
15 tribal, Federal and State, are followed to the absolute  
16 letter of the law without exception.

17 This project, like so many others within the  
18 boundaries of this tribe, is an attempt to go around the  
19 laws, ignore the procedure, and bypass rules and  
20 regulations which appear to avoid the fact and the  
21 jurisdiction of the existing of this tribe and the laws  
22 that protect our sovereign government.

23 Therefore, before any further action is taken on  
24 this project by your agency or any other Federal and State  
25 agencies overseeing this project, the tribe requests that a  
26 proper and complete EIR be done and the concerns of the  
27 jurisdiction of this tribe be honored.

28 Members of the Board, I thank you for your time.

29 I would like to expand on this just a little bit.  
30 We, along with all the other tribes so far that I have  
31 talked to throughout the state, with a few exceptions, have  
32 been excluded from all water rights hearings, all water  
33 rights issues, and all water rights concerns. The EIRs in  
34 this state, unfortunately, only reflect one small part of  
35 what an Indian tribe is about. The only concerns they ever  
36 demonstrate is they claim our only concern is that of  
37 archaeology. That is a small concern. That's our history.  
38 We are talking about the present, the past, as well as the  
39 future. Our concerns are with fish and wildlife. Our  
40 concerns are with recreational use. Our concern is with  
41 proper distribution and consumption of the water. Our  
42 concerns are with our rights.

43 This tribe did not give up anything. It is true  
44 there was a settlement on land claims, but the land claim  
45 was only for areas outside of the land bases occupied by

1 the tribe and it exclusively did not include water and  
2 mineral rights.

3 As we walk through your process in the State of  
4 California, which we spend most of our time with the  
5 federal agencies, supporting them and having them support  
6 us, we discover a real deficiency in your system.

7 This agency and the Resources Agency has no method,  
8 no possible way to notify the Native American tribes in  
9 California, and yet, you have 139 tribes. I said, how do  
10 you contact us, and the response was simply, we don't have  
11 a way.

12 So, we went into the process to see if possibly you  
13 did. You do not. You have the Native American Heritage  
14 Commission, but it represents a very minute population of  
15 the State of California Indian tribes, and it has no  
16 method.

17 So, what we are saying is, please include the tribes  
18 in all the water rights hearings and other tribes. There  
19 are 139 of us. Some do not have aboriginal claims, but  
20 nevertheless, they need to be included and take into  
21 consideration our concerns, the bed of the rivers, the bed  
22 of the Delta -- we retained it and we would appreciate  
23 being included in all of these issues.

24 We may or may not object to what the changes in the  
25 water rights are going to be and we certainly are just  
26 looking for proper management. We are not interested in  
27 selling the rights or even discussing that. We just want  
28 to see management done on these rivers. It isn't happening  
29 and El Dorado reflects that perfectly.

30 Thank you.

31 MR. STUBCHAER: I understand if you would give the  
32 mailing list to our staff, you will be added to our mailing  
33 list.

34 MS. VILLA: Thank you. We have done that. The  
35 federal laws require that the State notify the tribes  
36 whether they are on the mailing list, and there is an  
37 agency called the California Indian Housing Authority, and  
38 they produced a book called *California Indian Directory* and  
39 in that book they have 105 of the 139 tribes, and they deal  
40 with us on a daily basis, so there seems to be a real  
41 defect here and I understand that, but we really think your  
42 agency should look into that defect, because more and more  
43 tribes are becoming educated on their rights and they are  
44 going to be stepping forward.

45 Thank you.

1 MR. STUBCHAER: Thank you.

2 Next is Curtis Manning.

3 MR. MANNING: I have some copies of my presentation,  
4 if anybody would like them.

5 My name is Curtis Manning. I live in Berkeley. I  
6 am a freshman and a member of the Rapid Communications  
7 Union. I also have a Bachelor of Arts Degree in Philosophy  
8 from the University of California at Berkeley, and am  
9 active in the development and application of my philosophy  
10 in a broad range of applications. As such, I suppose I am  
11 to be categorized as a generalist.

12 In reading the testimony, I found the situation  
13 presented by scientists from the Department of Fish and  
14 Game regarding plant and animal species most compelling,  
15 though I don't agree with their general tone that impacts  
16 may be mitigated by paying them to set up habitat  
17 management protection programs.

18 From the Sierra Club Legal Defense Fund, I greatly  
19 admired the clarity and forcefulness of the testimony of  
20 Dr. Robert Curry in criticizing the acceptability of the  
21 final EIR.

22 Save the American River brought up some important  
23 issues regarding public trust.

24 Many of the points I wished to address are already  
25 well covered by the testimony which is to follow. I think  
26 you will find the documentation of the impacts on various  
27 ecosystems convincing and irrefutable.

28 The Board will need to balance the needs of the  
29 environment against those of the El Dorado general plan  
30 which calls for more water for consumptive use. I hope to  
31 show that up to now, the environment has endured shabby  
32 treatment because of our profligate use of water, that we  
33 shall have to curb our addiction to growth in order to  
34 maintain order in our society, and that we might as well  
35 start now while the environment is still there to save.

36 On a recent family trip I stopped at the Mono Lake  
37 Information Center picking up a brochure entitled *Join the*  
38 *Effort to Save Mono Lake*. With this information I learned  
39 of some of the problems resulting from the usual approach  
40 to water management. In its basics, these problems are  
41 quite similar to those of the El Dorado project. The  
42 parallel can be instructive because with Mono Lake the  
43 environmental issues are simpler and easier to fathom.

44 The brochure tells us that the Los Angeles  
45 Department of Water and Power has been diverting water from

1 streams feeding the lake, causing the lake to fall more  
2 than 40 vertical feet since 1941, doubling the salinity,  
3 and causing caustic dust storms as winds blow over the  
4 denuded lakebed.

5 In 1980, the Negit Land Bridge formed threatening  
6 the population of nesting birds, and precipitating a flurry  
7 of litigation and lobbying.

8 Perhaps most significant and telling, is a  
9 California Superior Court ruling that Mono Lake should  
10 remain above the 6377 foot elevation. This action, plus  
11 Los Angeles greed, assures a fine-tuned minimum lake level.

12 In the watershed of the more complex river Delta  
13 estuary system, which is the larger context for the El  
14 Dorado project, the same fine tuning philosophy has been  
15 applied. But we have seen this philosophy fail with the  
16 Delta where the ecosystem continues to degrade, with  
17 precipitous declines now in the smaller species such as  
18 smelt that had up to now maintained their numbers, while  
19 striped bass and salmon have all but disappeared.

20 The fine-tuning philosophy has failed because of  
21 actions based on a lack of thorough knowledge of the  
22 specific ecosystems involved, and wishful thinking by those  
23 in the position to make decisions.

24 It is apparent that most policy makers feel they  
25 have done enough for the environment by preserving what  
26 they think is a minimal remnant of an ecosystem, meanwhile  
27 providing water for extravagant uses such as private pools  
28 and lawns.

29 So, while the environment must go dry, the members  
30 of one species will get as much as they like subject only  
31 to the ability to pay.

32 The El Dorado general plan projects dramatic  
33 residential growth and has asked for more water. CEQA  
34 requires that the significant cumulative impact of this  
35 project and others on the rivers, Delta, estuary, as well  
36 as on land-based species, must be taken seriously in the  
37 EIR.

38 I maintain that as long as the current extravagant  
39 use of water is tolerated, and foreseen to continue in the  
40 EIR, the impacts cannot have been taken seriously. As Dr.  
41 Curry notes, the opportunity not to meet projected demands  
42 and thus limit growth was not considered at all in the EIR.

43 To do anything less than supply available water upon  
44 demand to the California consumer is to begin to deny the

1 myth that we have somehow escaped from the life-and-death  
2 struggles from which we as a species emerged.

3       Rather, we have only temporarily displaced the  
4 dividing line so that it is the other species which are  
5 losing the battle for survival. A growing number of us now  
6 worry about the survival of humanity seeing that our  
7 civilization is an important part of our humanity.

8       Let me illustrate. In the 1950s, John Calhoun did a  
9 series of experiments on crowding in rates, investigating  
10 the need for space and social order. At high densities,  
11 what is called behavioral sinks formed, gross distortions  
12 of behavior that appeared in the majority of rats as a  
13 result of unrelieved stress.

14       A behavioral sink aggravates all forms of pathology  
15 that can be found within a group. The sex morays of the  
16 rats in the sink were disrupted, and pan sexuality and  
17 sadism were endemic. Rearing the young became almost  
18 totally disorganized. Social hierarchies were unstable and  
19 territorial taboos were disregarded unless backed by force.

20       We are finding behavioral sinks developing in our  
21 society, a general decline of living conditions with high  
22 rates of abuse, murder, sexual dysfunction, alienation and  
23 depravity. At the same time the stress is imposed on  
24 ecosystems by constriction of their life needs is more  
25 severe and has resulted in populations collapses.

26       Why is this happening? It is clear that it is a by-  
27 product of our economy and our system of values. As  
28 Wendell Berry has noted, value has been displaced from good  
29 work, its product, and the community to their monetary  
30 value. We have let profit become the highest value.

31       The result is polarization of the world into  
32 exploiters and exploited, rich and poor, with a diminishing  
33 middle class. This system, however, is not sustainable  
34 since it relies on growth rather than production. This  
35 dominant paradigm is increasingly unable to solve the  
36 complex problems facing us because the margin of its  
37 survival is diminished by sheer bureaucratic weight, the  
38 growing severity of behavioral sinks, and because of people  
39 like myself who see that the system is unjust.

40       Highly energetic systems, such as our own, are  
41 wasteful, age quickly and must change to a more sustainable  
42 level or else die. The danger of catastrophic social  
43 disorder looms ahead unless we act to curtail growth, and  
44 instead, move toward population control and labor intensive

1 production at fair wages, which gives us all a stake in our  
2 civilization.

3 In preponding an organic philosophy which would lead  
4 to a more enlightened water policy, I find two key concepts  
5 helpful in guiding society in a way that will avoid the  
6 production of behavioral sinks.

7 The first is the concept of the sustainability of an  
8 economy, for instance, an agriculture that relies on  
9 pumping a non-renewable aquifer is not sustainable.

10 The second concept is that of stewardship.  
11 Stewardship is the long-term involvement with the help and  
12 being of our land. The Mormon essayist, Hugh Misley  
13 (phonetic) said man's dominion is a call to service, not a  
14 license to exterminate.

15 The EIR before you is well crafted to deliver the  
16 water and preserve the illusion that nothing is being done  
17 to harm the environment. However, I encourage you to take  
18 the long view, to be stewards of this greater water system  
19 and land environment. Turn down this proposal. To cover  
20 our land, both farmed and wild, with homes and businesses,  
21 and use our water to flood our wastes and feed our lawns  
22 and egos, is to eventually cut our own throats.

23 Put the water back in the streams. Leave other life  
24 forms to reproduce their kind and wild areas to be wild.

25 Humanity is not everything. We are part of a whole.  
26 To recognize this is to begin to become whole again.

27 Thank you.

28 MR. STUBCHAER: Thank you.

29 Mr. Richard Sohren for the Department of Water  
30 Resources.

31 MR. SOHREN: My name is Richard Sohren. I am  
32 Manager of the Urban Water Conservation Planning with the  
33 California Department of Water Resources.

34 I am here to make a policy statement that may help  
35 the Board answer a question that was identified as a key  
36 issue, No. 7, in the Notice of Public Hearing; that is, are  
37 there water conservation or other measures that can be  
38 taken to assure that water will be diverted and used in the  
39 most efficient manner? If so, what are they?

40 I am not speaking to the merits or other issues of  
41 the application, but only on the issue of water  
42 conservation.

43 In the power policy issued by Governor Wilson last  
44 year, the Governor stated that water conservation practices  
45 should become an essential standard used by the State Water

1 Resources Control Board in issuing permits regarding urban  
2 water conservation. The Governor noted that the State,  
3 along with more than 100 water agencies, had signed a  
4 Memorandum of Understanding identifying a set of best  
5 management practices for urban water conservation.

6 He stated that adoption of these practices will  
7 institutionalize the water-saving measures that produce  
8 major cost savings.

9 Over 150 urban water suppliers, public interest  
10 groups, and other organizations have endorsed a procedure  
11 in the Memorandum of Understanding for carrying out the  
12 Governor's policy and assuring that municipal water  
13 supplies are used in the most efficient manner.

14 It would be appropriate for the Board to work with  
15 the applicants to assure that all justified best management  
16 practices will be implemented, and the Department of Water  
17 Resources would be happy to advise the applicants and Board  
18 staff on the development of appropriate urban water  
19 conservation programs for the service areas involved.

20 MR. STUBCHAER: Thank you.

21 John Rigsby for El Dorado Irrigation District.

22 MR. RIGSBY: Good morning. My name is John Rigsby.  
23 I am the current President of El Dorado Irrigation District  
24 Board of Directors.

25 The District has a statutory responsibility to  
26 provide water to our present and future agricultural and  
27 domestic customers.

28 Several years ago our yearly supply and demand  
29 analysis began to show that a new water supply was clearly  
30 needed by the years 1997 to 2000. Consequently, in 1990,  
31 we entered into a cooperative agreement with the El Dorado  
32 County Water Agency to work to provide this new water  
33 supply.

34 Our water rights application in the identified  
35 preferred White Rock project alternative has the full  
36 support of our Board and of our customers. This support  
37 has come through readily apparent efforts to provide an  
38 adequate water supply with the fewest environmental impacts  
39 at the lowest cost possible.

40 The El Dorado Irrigation District Board of Directors  
41 appreciates that the State Water Resources Control Board is  
42 giving full and Objection consideration to our  
43 applications, and we are anticipating a favorable ruling  
44 based on the evidence presented.

45 Thank you.

1 MR. STUBCHAER: Thank you, Mr. Rigsby.  
2 John Upton, El Dorado County Water Agency.

3 MR. UPTON: Good morning, Mr. Stubchaer. My name is  
4 John Upton. I am presently the Chairman of the Board of  
5 Directors of El Dorado County Water Agency.

6 The Board of Directors has been involved during the  
7 course of four years in moving the agency toward these  
8 hearings before the State Board.

9 There is a tremendous amount of community support  
10 for the applications and petition before your Board.

11 I can make no stronger statement than stating here  
12 and now that the issuance of water rights permits are  
13 essential to the growth and economic prosperity of the  
14 County in general and for El Dorado Irrigation District  
15 service area in particular.

16 It is the El Dorado Irrigation District portion of  
17 the County that is the engine that drives the economic  
18 machine. It is a healthy, growing economy that enables  
19 County government to protect public health, safety and  
20 welfare, maintain roads and transportation systems, and  
21 protect the environment.

22 The El Dorado County Board of Supervisors serve ex-  
23 officio as the Board of Directors of the County Water  
24 Agency. County and Water Agency planning efforts are  
25 closely coordinated.

26 The Agency Board of Directors took a number of  
27 actions in May, including certifying the water program and  
28 El Dorado project final Environmental Impact Report for the  
29 El Dorado District service area, adopting findings of fact  
30 and statements of overriding consideration, and adopting a  
31 mitigation monitoring plan.

32 Based on the foregoing, I respectfully urge the  
33 State Board to act favorably on our request and issue  
34 permits for the amounts of water sought by the Agency and  
35 the El Dorado Irrigation District.

36 Thank you for extending to me the courtesy to  
37 address you today.

38 MR. STUBCHAER: Thank you.

39 We have a late card from John and Grace Olson.

40 MR. OLSON: We have no statement.

41 MR. STUBCHAER: You are just going to submit your  
42 written testimony?

43 MR. OLSON: Yes.

44 MR. STUBCHAER: Thank you.

1           That concludes the policy statements. We will now  
2 proceed to the oath for those who are going to testify  
3 during the regular hearing.

4           MR. GALLERY: Mr. Stubchaer, I would like to, for  
5 the County of Amador, at this point, before you start the  
6 hearing, renew the request that has been made previously by  
7 a couple of other parties that this hearing should not go  
8 forward at this point for the reason primarily that the  
9 project is structured upon at least four very important  
10 agreements.

11           There has to be an agreement with PG&E Company to  
12 cover several aspects of the operation. There is no  
13 agreement at this point.

14           There has to be an agreement with SMUD to cover the  
15 operation of the project through the SMUD reservoir, and  
16 there is no agreement at this point.

17           The project contemplates an agreement with the U. S.  
18 Bureau of Reclamation for use of Folsom Reservoir storage.  
19 There is no agreement at this point.

20           The project contemplates an agreement with the  
21 Bureau of Reclamation to reoperate the Sly Park project.  
22 There is no agreement at this point.

23           And so, all of these agreements, in our mind, could  
24 reconstruct how this project would be operated, and so, for  
25 us to proceed at this point without knowing how those  
26 agreements, if and when they are entered into, would alter  
27 this project and affect it. We have no way of telling when  
28 those agreements are in place what the project will be and  
29 what the impacts will be upon the protestants, or how we  
30 will be injured.

31           We have no way of knowing how we can protect  
32 ourselves because we don't really know what the project is.

33           In addition to those things, we want the Chair to be  
34 aware that there are at least three lawsuits on file which  
35 challenge the Environmental Impact Report. The Board is  
36 not legally required to hold up the hearing because of  
37 those lawsuits, but the fact is that those lawsuits are  
38 there and could significantly affect how this project is  
39 going to be put together.

40           An additional point is that both the County of  
41 Amador and the County of Alpine have filings on Caples Lake  
42 and on Silver Lake to appropriate water from the reservoir  
43 under the State filings and these have the same equal  
44 priority that the El Dorado petition has.

1           And so, the Board is going to have to decide under  
2 the Amador County petition and Alpine County petition  
3 whether those filings should come ahead of the El Dorado  
4 filings, and so those things should all be considered  
5 together.

6           And the way this thing has been put together, El  
7 Dorado's petition is up for hearing first with ours still  
8 pending.

9           And then, finally, I want to point out that the  
10 evidence that El Dorado has presented is to the effect El  
11 Dorado is not going to need any water until 1997. We have  
12 four years yet before this project is needed, so we don't  
13 see what the hurry is of having this hearing before all  
14 these agreements are entered into.

15           As the El Dorado representatives have stated here,  
16 they had this project in the making for four years and  
17 these agreements are necessary to make this project go.  
18 And without those agreements, we feel that the Board is  
19 going to waste all this time of all these people for five,  
20 six, perhaps seven days, and we may have to come back and  
21 do all of this again after these agreements are in place  
22 and we know what we have.

23           So, it would seem to us to be much more efficient to  
24 defer this hearing at this point and give the applicants  
25 time to consummate those agreements and bring them in so we  
26 know what we have got, what we are dealing with and how we  
27 need to condition the application.

28           MR. MOSS: I am Richard Moss, attorney for PG&E, and  
29 I would like to support Mr. Gallery's statement.

30           PG&E respectfully moves to postpone the hearing  
31 until such time as the applicants have either amended their  
32 application to strike those parts that seek to appropriate  
33 water that is part of PG&E's Federal Energy Regulation  
34 Commission's license, El Dorado and Chili Bar projects; or,  
35 in the alternative, the applicants have reached a binding  
36 agreement with PG&E acceptable and approved by FERC for the  
37 joint use of projects 184 and 2155 water and facilities.

38           And in support of this motion, PG&E states that no  
39 such agreement does presently exist and that the Board, of  
40 course, is well aware of the legal *occupancy of the field*  
41 by FERC of all rights that burden and are recognized as  
42 binding on FERC licensees, and of course, I respectfully  
43 call the Board's attention to the 1993, February 1,  
44 decision of the Ninth Circuit in Sales Hydro Associates  
45 versus your former Chairman, Don Maughan, et al., where the

1 court held it is clear that the federal laws have occupied  
2 the field preventing State regulation.

3 Now, there may be a time when this hearing may be  
4 appropriate, and as Mr. Gallery recited, agreements would  
5 be in place, but that is not the case today.

6 MR. STUBCHAER: Ms. Peter.

7 MS. PETER: Ellen Peter representing the Department  
8 of Fish and Game.

9 We would also like to request, as we had previously  
10 in writing, a postponement of the hearing for some of the  
11 reasons outlined by Mr. Gallery and Mr. Moss.

12 In addition, we would like to point out, as we had  
13 in writing previously, that the biological studies were not  
14 done in order for the Board to answer some of the issues  
15 presented in the hearing notice, and so, for those reasons,  
16 we would like to again reiterate a request for postponement  
17 of this hearing.

18 MR. VOLKER: Chairman Stubchaer, I would like to  
19 reiterate the comments made by Mr. Gallery and others with  
20 regard to the need to continue this hearing.

21 There are three reasons why a continuance is  
22 absolutely essential:

23 First, we do not have a precise project description  
24 at this time for the reason that the agreements with PG&E,  
25 SMUD, and the Bureau of Reclamation, necessary to define  
26 the project are not in place.

27 Secondly, we do not have adequate environmental  
28 reviews necessary for this Board to properly review this  
29 project. As has been indicated, there are at least three  
30 lawsuits against the EIR determination of adequacy by the  
31 applicant, and we should allow those lawsuits to reach  
32 conclusions in the Superior Court before this Board takes  
33 action in apparent reliance on the environmental review  
34 undertaken by the applicants.

35 And finally, we would point out that Alpine County  
36 and Amador County are counties of origin in this case.  
37 Their petitions for partial assignment of State filed  
38 Application 5645 are entitled to as much priority and  
39 weight as the application submitted by the applicants in  
40 this proceeding, yet those priorities are not being heard  
41 presently.

42 Their petitions for partial assignment and their  
43 application for water rights are not presently before this  
44 Board. Obviously, since they are entitled to the same  
45 weight, they should be heard at the same time.

1           For those three reasons, I would request that the  
2 Board reconsider this decision to proceed, and instead, to  
3 continue this matter for a time sufficient to permit  
4 answers to those questions.

5           And the applicants have indicated that they do not  
6 need the water until at least 1997, so I think we have  
7 adequate time to resolve these questions.

8           MS. VILLA: Yes, Mr. Chairman, I am Joan Villa and  
9 we will support Amador County's request for continuance.  
10 The tribe would like an opportunity to review this with the  
11 Bureau of Reclamation and other Federal agencies, and I  
12 don't know if you are aware, but Federal law does require  
13 that these people enter into an MOA with the tribe to  
14 proceed, and we would like an opportunity to get that  
15 agreement in place, and like I said, deal with the Federal  
16 agencies.

17           I would like to review as to whether this particular  
18 issue could be properly to Federal Court under the tribe's  
19 jurisdiction, and the continuance would be very helpful for  
20 us to make the determination in a more equitable manner.

21           Thank you.

22           MR. JACKSON: Good morning, Mr. Stubchaer.

23           On behalf of Friends of the River, we would join the  
24 request for a continuance. Our reasons are essentially the  
25 same as others. We believe that FERC has pre-empted this  
26 decision under Sales Hydro. We believe that until there is  
27 an agreement by PG&E and SMUD, and until that agreement has  
28 been authorized and made a part of this licenses by FERC,  
29 we believe that this hearing is simply a waste of time,  
30 manpower and money, on behalf of the State.

31           As someone who has been through a number of hearings  
32 in the last two years that went nowhere legally because  
33 parties backed out of these hearings because they were  
34 premature, because there were Federal pre-emption  
35 questions, because there were Federal laws, I am worried  
36 about the amount of time that this Board has wasted on  
37 hearings that do not do anything except polarize the  
38 parties, so I would request that we not have another Bay-  
39 Delta fiasco at this point.

40           In regard to the reregulation of the Bureau's  
41 activities, clearly those are pre-empted. Both Sly Park  
42 and Folsom and how they are operated are going to make a  
43 big difference on the environmental effect of this  
44 particular set of hearings.

1           We do agree that there is no precise project  
2 description and in our mind we cannot go forward to deal  
3 with the public trust problems on the river which are our  
4 main concern, both fisheries and wildlife, and white water  
5 rafting, which is a public trust navigability question that  
6 we believe will result in no change from the present  
7 management, unless to increase the amount of water that  
8 takes place in the early summer which would have an effect  
9 on all of the lakes up above.

10           So, consequently, we believe that all of the  
11 evidence needs to be in front of the Board before it makes  
12 such a decision.

13           We also believe that questions of counties or origin  
14 are extremely important here. We believe that that's an  
15 area of the law that needs to be looked at. With Alpine,  
16 Amador and El Dorado Counties claiming County of origin  
17 rights, and this environmental document not dealing with  
18 those questions, it seems that the Board is going to have  
19 to make a decision based upon evidence that is not in front  
20 of it.

21           We would ask for the continuance in this regard  
22 simply as a matter to save money and time of the State of  
23 California.

24           MR. STUBCHAER:   Excuse us, we will have a little  
25 huddle here for a couple of minutes.

26           (Short interlude)

27           MR. STUBCHAER:   All right, we will come back to  
28 order.

29           Does anyone else want to address this request?

30           Mr. Somach.

31           MR. SOMACH:   Yes, Mr. Stubchaer.

32           You know, these issues have been before the Board by  
33 written motion prior to today. I have responded in writing  
34 to all of those, and the Board has ruled specifically with  
35 respect to the case of the Department of Fish and Game, and  
36 as part of the hearing notices on these hearings with  
37 respect to the rest of these issues.

38           No issue that was raised today by these parties is  
39 new in any way, shape or form. Each one of them has  
40 already been before the Board on those issues.

41           So, the first thing I would like to do is  
42 incorporate, if I could, my prior comments on those issues  
43 for the record in opposition to any delay.

44           Delay is, of course, one of the things that any  
45 opposition to any project seeks. The easiest way to stop a

1 project is delay. If you delay it long enough, the ability  
2 of the project proponents to move forward with the project  
3 is adversely affected. That goes in terms of the economics  
4 of the project, and it also goes with respect to the  
5 underlying need for the project.

6 This project, of course, is at least four years in  
7 the development. It is going to take many more years for  
8 us to actually have a project where water is flowing and  
9 where the citizens of El Dorado County can rely upon that.  
10 1997, unfortunately, will be that period of time where this  
11 supply and demand line cross.

12 Delay, even of a day, of moving forward with these  
13 water rights puts El Dorado County and El Dorado Irrigation  
14 District in a position where they will be unable to meet  
15 the demand based upon the existing supply.

16 With respect to these agreements, we have recognized  
17 all along that we need agreements. One of the things that  
18 we are going to pose here are terms to be inserted in a  
19 permit that is issued by the State Water Resources Control  
20 Board that would protect the interests of PG&E so they  
21 would not or will not be adversely affected.

22 In my opening statement as part of the testimony we  
23 are going to describe this project. I believe that this  
24 project has been misconstrued, perhaps misunderstood by the  
25 parties. It is probably the most environmentally benign  
26 water project that has ever been proposed.

27 I can't imagine what would have happened if we came  
28 before the Board to actually construct a reservoir and do  
29 the traditional things in terms of development of water  
30 supplies.

31 But with respect to agreements, I want the Board to  
32 remember that what we bring before you is a project and if,  
33 for some reason, whatever reason, we are not able to move  
34 forward with that project, we, of course, would have to do  
35 supplementary environmental work on some other project, and  
36 that other project then would have to be before this Board  
37 in terms of any potential modification of permits.

38 We have a project. The project is clearly defined  
39 both in terms of application before this Board, the  
40 Environmental Impact Report, and that is what we would like  
41 to proceed with in these hearings.

42 Finally, with respect to this issue of Sales Hydro  
43 Associates and the Federal pre-emption issue, I would like  
44 to say I know a little bit about that case and can assure

1 the Board that the issues that are dealt with in that case  
2 have very little, if anything, to do with this case.

3 We are here not attempting whatsoever to modify any  
4 operations of those lakes from the perspective of PG&E at  
5 all.

6 And as a consequence, if you have no operational  
7 effect upon the FERC licensed project, it seems to me  
8 impossible to understand how anyone actually treads on any  
9 rights that are within the Federal province.

10 More than that, I can repeat over and over again  
11 what was written in the letters, but I won't do that. If  
12 you have any questions on any of these points, I would be  
13 more than happy to respond to them.

14 MR. STUBCHAER: Thank you.

15 MS. VILLA: I would like to come forward.

16 With all due respect to the gentlemen from El Dorado  
17 County, I do believe we have an issue that has not been  
18 presented. We haven't had any opportunity to present  
19 anything. This tribe has not been acknowledged. As of  
20 yet, our jurisdiction has not been acknowledged.

21 Therefore, I think this tribe, which is recognized  
22 by the Federal Government should have a right to step  
23 forward. Since the State of California lacks the process  
24 for notification other than our coming in as other  
25 interested parties, which is outrageous, and El Dorado  
26 County has made no attempt to work with this tribe.

27 I reviewed their EIR. Their EIR has an addendum  
28 that they published on May 10 of this year as to what they  
29 might do should they get to the White Rock project.

30 This project has an effect on what is traditional  
31 practice of this tribe, along with the water rights that we  
32 retain. Therefore, we are a new issue and continuing this  
33 would be the only fair thing to do, not only to ourselves,  
34 but to the other agencies that the tribe needs to deal  
35 with, such as Amador County, such as El Dorado County and  
36 Alpine County, and all the Federal agencies, so I disagree  
37 with this gentlemen and I think a continuance should take  
38 place.

39 MR. STUBCHAER: Mr. Moss.

40 MR. MOSS: Mr. Stubchaer, with all due respect to  
41 Mr. Somach, who I acknowledge was counsel, of course, on  
42 the Sales Hydro case for the successful party, PG&E  
43 believes, though, that first of all, there is no permit  
44 term that this Board can issue however skillfully crafted  
45 that can overcome the Federal pre-emption that attaches to

1 both of the facilities, the lakes and to the power  
2 generation.

3 Now, on its face, these applications seek to  
4 appropriate water that is presently used in the generation  
5 of power at El Dorado and Chili Bar powerhouses, both  
6 Federally licensed projects.

7 So that even in accepting their argument that there  
8 would be no change in the operation of the upstream  
9 reservoirs, the proposal clearly, on its face, seeks to  
10 alter and modify power generation. FERC requires amendment  
11 of a license to modify power generation.

12 Now, again, whether that will happen is something  
13 that at this point is unknown, but it has not happened and  
14 it is clear as the U. S. Supreme Court has held in the  
15 California case in the Sales Hydro that covers the entire  
16 field, this is part of the field that is pre-empted.

17 MR. STUBCHAER: Thank you.

18 Well, I have heard the arguments and I am going to  
19 rule we will continue with the hearing. The reason for the  
20 hearing is to develop answers to many of the questions  
21 which have been raised. As far as the EIR is concerned,  
22 the fact that it is being challenged in court is not  
23 something that we should consider.

24 Ms. Katz, do you care to add to my comments?

25 MS. KATZ: Just briefly for clarification purposes  
26 -- I would reiterate that the purpose of the hearing is to  
27 receive a lot of this evidence that is currently lacking.

28 The Notice of Hearing stated that an operating  
29 agreement and other contracts may be necessary for El  
30 Dorado to operate such a project and should the Board  
31 approve the project, those would be required to be  
32 introduced into evidence, and the Board can certainly  
33 continue the hearing to receive those documents.

34 It is also appropriate to ask during this hearing  
35 the status of negotiations and whether such agreements may  
36 even be forthcoming, but all of that is to be developed at  
37 this hearing.

38 We do have authorization under the Water Code to  
39 have a hearing at any time for any purpose regardless of  
40 whether other individuals think that it might not be  
41 efficient or might interfere with their plans. The Board  
42 certainly has the legal authority to conduct this hearing.

43 The Board also has the authority to continue this  
44 hearing to receive any evidence it desires to enable it to

1 make decisions on this project either to deny them or  
2 approve them.

3         Regarding the county of origin concern that was  
4 listed as an issue in the Notice of Hearing on the State  
5 filed application, the petition for partial assignment of a  
6 State filed application and the issue was raised whether  
7 the petition complies with the Water Code, and the Water  
8 Code raises the issue of county or origin protection.

9         We are aware of and take administrative notice of  
10 the fact that there are competing applications on file for  
11 that State filed application.

12         The Board is not required to have a hearing to  
13 address all of the competing applications at the same time.  
14 It may do so and it may decide to continue this hearing to  
15 broaden the scope, but those things are yet to be decided.

16         For the time being, there is ample authority to  
17 proceed and I would like to make one comment for the record  
18 so that it does not go unchallenged.

19         Regarding the claim of the Miwok Tribe that the  
20 Board lacks a process of notification, I thought that was  
21 addressed earlier in a meeting in my office, but if the  
22 Miwoks and others will provide notification to us with  
23 names and addresses, we will put them and anyone else who  
24 desires to be on our mailing list, for all notifications  
25 for applications, petitions, and other items of interest so  
26 they will be notified.

27         The Water Code requires the State Board to notify  
28 persons that may be affected by an application and then the  
29 only way we have of knowing whether people are out there  
30 that may be affected, is whether they also have water  
31 rights, license or permits that are on file with the Board,  
32 or have filed a statement of water diversion and use, which  
33 is required by the Water Code for persons diverting under  
34 riparian right or pre-1914 rights.

35         Then, other persons, if they will notify us to be  
36 put on a list, we will notify them.

37         So, I would like to clarify that we do have a  
38 process for notification, and I am sorry that the Miwok  
39 Tribe was not notified prior to the hearing notice going  
40 out originally, but they did receive notice of the hearing  
41 and will receive notice of future actions.

42         What has happened between them and El Dorado County  
43 or anyone else is really not relevant to this proceeding,  
44 and is not something the Board has jurisdiction over.

1 MS. VILLA: I want to clarify -- we received notice  
2 only a week or so before this hearing.

3 MS. KATZ: I understand that.

4 MS. VILLA: We did not have adequate time to prepare  
5 any type of evidence.

6 MR. STUBCHAER: All right. I may have used the  
7 wrong word. Did I say continue with the hearing? I meant  
8 proceed with the hearing.

9 All right, we will now administer the oath. Will  
10 all those persons who may testify during this proceeding,  
11 please stand.

12 (The witnesses were sworn.)

13 All right, we will proceed with the testimony. The  
14 first party is the applicant, El Dorado County Water Agency  
15 and El Dorado Irrigation District. Mr. Somach.

16 MR. SOMACH: Thank you, Mr. Stubchaer.

17 If I could, I would like to begin with a bit of an  
18 opening statement, and in that opening statement, I want to  
19 focus on a few issues rather than talking about the project  
20 in its broader concept.

21 What I want to do is talk about some specific  
22 issues, in particular issues that have been raised by  
23 protestants, which again, in our view are misconceptions,  
24 maybe mistrust, in all candor, of what El Dorado is up to  
25 here, and I want to talk a little bit about those issues  
26 and even provide some ways of dealing with those issues.

27 The first question I call the numbers. We have  
28 indicated that what we are relying upon in general is about  
29 17,000 acre-feet of water once the White Rock part of this  
30 project is on line. Our applications, however, talk about  
31 storage, a bit over 32,000 acre-feet, and also, of direct  
32 diversion rights associated with them.

33 This project, as I said earlier, is not a  
34 traditional water project. We didn't go out and design a  
35 project to then obtain a certain yield from that project.  
36 Rather, what we did was we went out and took a look at what  
37 was already available running through the county in terms  
38 of a water system and we took a look at it from the  
39 perspective of assuming a minimal, if no modification, in  
40 the existing operations of those facilities, how much water  
41 would be available to the county to be used on a  
42 consumptive use basis, and so, essentially what we did was  
43 take a look at historic operations of those facilities and  
44 determine that we probably could net out about 17,000 acre-  
45 feet of water.

1           In other words, we backed into the so-called yield  
2 number. It is not a traditional yield number. It is a  
3 number that nets out after you take a look at the way those  
4 facilities are operated for all those other purposes,  
5 including maintenance of lake operations as they have  
6 historically been maintained.

7           We then went back and decided that in order to  
8 provide the maximum amount of flexibility in order to net  
9 out this 17,000 acre-feet, we had to go back and apply for  
10 the quantities of water in terms of storage that we applied  
11 for as well as the direct diversion rights. They merely  
12 are what happens when you back away then from that 17,000  
13 acre-foot number and take a look at how it is derived.  
14 That is some of the testimony that you will hear and others  
15 can cross-examination on, but I want to make sure that the  
16 non-traditional nature of what is being proposed here is  
17 understood, and to the extent the number 17,000 or the term  
18 yield is used, we are clearly not utilizing that in the  
19 traditional way mainly because we have no control over how  
20 those other facilities are operated.

21           In these proceedings we don't seek to obtain control  
22 over how those facilities are operated. We just simply  
23 rely upon them.

24           The project is really divided then into two phases,  
25 Phase 1 and Phase 2. Phase 1, in theory, will move toward  
26 1997. In 1997, we hope to have on line the White Rock  
27 portion of this project. In order to do that we will need  
28 to reach agreement with SMUD.

29           We have two power agreements with SMUD, 1957 and  
30 1961 agreements, which provide our utilization of the White  
31 Rock facilities. We are now discussing with them the  
32 question of compensation. We have not reached agreement.

33           The one thing I know, however, is that we have a  
34 right, a contractual right to use those facilities as soon  
35 as we reach agreement on contractual matters.

36           We also are in the process of completing a site  
37 specific Environmental Impact Report with respect to the  
38 White Rock facilities. I know there will be some question  
39 about that. Your staff has asked some questions generally  
40 about that issue.

41           The White Rock EIR really relies on the final EIR  
42 that was done for the El Dorado project in terms of its  
43 overall environmental impacts on the water diversions  
44 themselves.

1           What the White Rock project's specific EIR will  
2 cover are the foot-print impacts of the pipeline and the  
3 facilities that need to be developed. All the broader  
4 impacts have already been analyzed and are part and parcel  
5 of the project level EIR which we have submitted as one of  
6 our exhibits here, and we will be talking about.

7           Just for your information and other information, the  
8 time line has a draft of that document out by July with a  
9 final out in November.

10          We, of course, will not divert any water through  
11 White Rock until such time as we have a final EIR certified  
12 under CEQA.

13          Now, in looking at the protests and the testimony  
14 and exhibits that were filed by other parties, protestants  
15 in this area, I have kind of boiled down those complaints  
16 in five categories and if I could, I would like to address  
17 each one specifically and then kind of give you the El  
18 Dorado view in capsule form now, to be talked about a bit  
19 later on.

20          First, there are those that are concerned about the  
21 El Dorado project's effect upon historic lake levels.  
22 These protestants perceive that despite El Dorado's  
23 statement about how the project is to work, that  
24 nonetheless, it will be the cause of lower lake levels than  
25 historically existed.

26          The second area or category are those protestants  
27 that are concerned about the impacts of the El Dorado  
28 project on the lower American River and on the Delta.  
29 These are so-called cumulative impacts associated with the  
30 project.

31          The third, really, is based upon a few protests that  
32 talk about the growth-inducing impacts of the El Dorado  
33 project, and in essence, if I can boil it down saying that  
34 growth is not good and it should not move forward.

35          The fourth category are protests that are really the  
36 SMUD/PG&E protests saying that, hey, we have got these  
37 facilities and we need to have contractual relationships  
38 with El Dorado before anything happens.

39          The final category is a category of protests which  
40 say you need a lot more baseline information before you  
41 move forward. The Department of Fish and Game is the major  
42 proponent of this argument out there.

43          Taking each one of these in turn, if I could, with  
44 respect to lake levels El Dorado has indicated that it has  
45 no control over PG&E's operation of the lakes. El Dorado

1 only wants to divert what is released when it is released  
2 by PG&E. That's what all of our testimony is going to  
3 state. That's what the EIR states and that's what our  
4 discussions with the parties that have talked to us about  
5 this have also focused upon.

6 As I said, I am not sure if there is a  
7 misunderstanding, a misconception or what with respect to  
8 that issue, or for plain old mistrust.

9 But what we would like to do in these hearings is  
10 propose an exhibit, Exhibit 69, and I know that I haven't  
11 introduced the exhibits properly and it is really not an  
12 exhibit, it's going to be a proposed term or condition to  
13 address lake levels and I have copies and I will submit  
14 them in a moment. I thought making them an exhibit would  
15 be the easiest way to talk about them as we move down  
16 through the hearing. But in the truest sense, they are not  
17 evidence.

18 If I could, that exhibit would read, or that term  
19 would read: *The permittee shall make no request of or*  
20 *agreements with PG&E for any change in the operation of*  
21 *lakes, and we will name the lakes there, or release of*  
22 *water therefrom which is different from the normal historic*  
23 *operation of those lakes, as described in Appendix A to the*  
24 *final EIR, which is basically a study of historic operation*  
25 *of the lakes with historic lake levels there, or would they*  
26 *require releases of additional water therefrom for use by*  
27 *permittee in the exercise of any rights conferred under the*  
28 *subject permit. All water diverted by permittee that comes*  
29 *from those lakes shall be water that PG&E has released on*  
30 *its own without requests by permittee and which is released*  
31 *as part of PG&E's normal operation of lakes.*

32 Now, all that is a restatement of everything that is  
33 in the EIR of the testimony, and some of our folks don't  
34 believe us when we say all we are going to do is rely upon  
35 what PG&E has released. We wouldn't entertain agreements  
36 with them to make them release more.

37 We have no problem in making that term a condition  
38 right in the permit as issued, so our rights would be  
39 constrained in that regard.

40 The second issue that is raised is one with respect  
41 to cumulative impacts and that cumulative impact argument  
42 really ignores a significant issue and that is that the law  
43 provides certain priority to areas of origin.

44 This priority should also extend to issues  
45 associated with cumulative impacts. Burdens associated

1 with cumulative impacts should fall on those who export,  
2 not on the mountain counties. To do otherwise, would be to  
3 vitiate the local protections otherwise provided by the  
4 law.

5           Nonetheless, El Dorado County is not trying to avoid  
6 any obligation it may have with respect to future  
7 standards, for example, in the Delta or on the lower  
8 American River.

9           We recognize that we shall be subject to those  
10 requirements, and again, have no objection to a term, and I  
11 believe there is actually a standard term that says this,  
12 but we have no objection to that and there is nothing here,  
13 even though we would contend that even cumulative impacts  
14 are diminimus, we would have no objection to this standard  
15 term being imposed on us.

16           We are not trying in any way to avoid legitimate  
17 obligations, both the important values of the lower  
18 American River or to those in the Delta.

19           The third area is a question of growth-inducing  
20 impacts. That's a CEQA issue which has been fully dealt  
21 with in the EIR, and the County of El Dorado has made  
22 appropriate findings with respect to growth inducement.

23           And I am going to make a statement here on behalf of  
24 El Dorado that we believe firmly in, and that is that  
25 attempting to control growth by managing water supplies is  
26 a truly dangerous thing to do, and we refuse to  
27 participate.

28           The fourth point is that the project, in terms of  
29 studies, whether or not there have been enough studies --  
30 one of the other things that seems to be ignored here is  
31 the fact that we are not changing anything, that the  
32 impacts of this project can be, in essence, focused on one  
33 small reach and that is called the Lotus reach which we  
34 will talk about, but with respect to everything else, it is  
35 already happening out there.

36           If there is a problem, it is a pre-existing problem  
37 and since we come to the Board and say we don't want to  
38 change anything PG&E does basically because everybody says  
39 they don't want us to change anything PG&E does, then it  
40 seems silly to do investigate anything other than what we  
41 have, the status quo.

42           We are not attempting to change the status quo and  
43 we have reported that our project will have no adverse  
44 impacts based upon the baseline of status quo.

1           Finally, with respect to PG&E and SMUD, they both  
2 raise issues associated with compensation. Some of these  
3 issues stem from contracts. Some of them stem from other  
4 kinds of operational imperatives. Again, we are going to  
5 propose two permit terms with respect to PG&E and I have  
6 labeled those, and I want to distribute them, as Exhibits  
7 70 and 71, and I will read one of them as an example that  
8 basically says: *This permit is subject to the prior*  
9 *rights, in this case I will use PG&E, to store and divert*  
10 *water at/from Medley Lake, Echo Lake, Caples Lake and*  
11 *Silver Lake, all tributary to the South Fork of the*  
12 *American River. This permit shall not be construed as*  
13 *conferring upon permittee the right of access to the*  
14 *property and facilities of PG&E for diversion of water.*  
15 *Under this permit, the predecessors of El Dorado Irrigation*  
16 *District and PG&E entered into an agreement dated May 31,*  
17 *1919, relating to water supply. This permit does not*  
18 *interpret or enforce the rights and duties of the parties*  
19 *to that agreement.*

20           It basically says, like I believe is normal  
21 practice, the Board never guarantees access to diversion  
22 sites or easements to ditches across the land. That is  
23 something that the Board says, we don't do. We expect the  
24 parties to go out there and enter into appropriate  
25 agreements and obtain them.

26           If PG&E and SMUD are comfortable about letting the  
27 law go as it is, we have no problems with terms in our  
28 licenses, again similar, not exactly the same, because the  
29 situations aren't the same, but PG&E and SMUD that  
30 specifically says the Board is not granting any access to  
31 these facilities, that prior to the time those facilities  
32 are utilized appropriate agreements must be entered into.

33           Well, that kind of summarizes some of the major  
34 points.

35           Our testimony today will be divided in two panels:

36           The first panel will be a panel that will talk about  
37 both El Dorado Irrigation District and El Dorado County  
38 Water Agency, and describe the project and the project's  
39 hydrology.

40           The second panel will be a panel made up of experts  
41 who will talk about the environmental and other impacts of  
42 the project.

43           MR. STUBCHAER: So, you are combining what was once  
44 considered the first two panels?

1 MR. SOMACH: That is correct, for two reasons.  
2 Number one, there really was no convenient break there  
3 because I assumed and I am not exactly sure in all candor,  
4 how cross-examination is to proceed, whether it is to  
5 proceed at the very end or at the end of the panels.

6 MR. STUBCHAER: At the end of all the panels. All  
7 the panels will be subject to cross-examination together.

8 MR. SOMACH: So, in that case, it matters little  
9 whether or not we combine the two panels for ease of  
10 telling the story, so to speak, I think combining them is  
11 best than artificially separating them out.

12 MR. STUBCHAER: So the combined panel will be 120  
13 minutes.

14 MR. SOMACH: We are going to be much shorter than  
15 what we anticipated when we first estimated our time. I  
16 believe we estimated about four hours, as I recall, and I  
17 think --

18 MR. STUBCHAER: You estimated much more and we cut  
19 you back to four.

20 MR. SOMACH: I think we will be close to two hours  
21 once we start.

22 MR. STUBCHAER: I think rather than get started on  
23 a lengthy presentation with a panel, it might be better to  
24 break for lunch, but did you want to identify your exhibits  
25 before we break for lunch?

26 MR. SOMACH: We will identify them as they come in  
27 and make sure we get them all in. I do want to at least  
28 get on the record these last three exhibits associated with  
29 terms. Again, they are not evidence. They are in the  
30 nature of a proposed term. I do want to talk about them a  
31 little bit, and as a consequence for ease of reference, I  
32 will give them an exhibit number.

33 MR. STUBCHAER: We will break for lunch until 1:00  
34 p.m. and this afternoon we will plan on going until five  
35 o'clock.

36 (Noon recess)

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MONDAY, JUNE 14, 1993. 1:00 P.M.

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MR. STUBCHAER: We will resume the El Dorado water rights hearing. We will proceed with the testimony of El Dorado County Water Agency and El Dorado Irrigation District.

MR. SOMACH: Yes, Mr. Stubchaer.

I think the way I would like to proceed, if I could, just to make this easy is to ask some initial questions of each of the witnesses in order to have them adopt both their qualifications and their summary of testimony, and then proceed individually with each one of them in terms of their prepared summary of testimony.

I would like to start with Robert Reeb.

Mr. Reeb, can you spell your name for the record, and also, indicate what your title is, your job title.

MR. REEB: My last name is R-e-e-b. I am General Manager for El Dorado County Water Agency.

MR. SOMACH: And Mr. Reeb, have you submitted your qualifications, your background of qualifications and experiences as an exhibit in this hearing?

MR. REEB: Yes. My statement of qualifications are presented in Exhibit 1.

MR. SOMACH: And your testimony, is that Exhibit 19?

MR. REEB: That's correct.

MR. SOMACH: Mr. William Robert Alcott.

Mr. Alcott, could you state your name and spell it, and indicate what your job title is?

MR. ALCOTT: My last name is A-l-c-o-t-t. I'm District Manager for El Dorado Irrigation District and have been for four years.

MR. SOMACH: And is Exhibit No. 2 an accurate and updated statement of your qualifications and background of experience?

MR. ALCOTT: Yes, it is.

MR. SOMACH: And is Exhibit No. 20 an accurate depiction of your written -- is that your written testimony for this hearing?

MR. ALCOTT: Yes, it is.

MR. SOMACH: Mr. Jack Hannaford, can you spell your name and indicate your job title, please.

MR. HANNAFORD: H-a-n-n-a-f-o-r-d. I am a principal in the Sierra Hydro-Tech Consulting firm. We are the engineers for El Dorado County Water Agency.

1 MR. SOMACH: Mr. Hannaford, is Exhibit No. 3 an  
2 accurate and updated statement of your qualifications and  
3 background?

4 MR. HANNAFORD: Yes, it is.

5 MR. SOMACH: And is Exhibit No. 21 your written  
6 testimony in this hearing?

7 MR. HANNAFORD: Yes.

8 MR. SOMACH: The last member of this panel is Robert  
9 Bowman.

10 Mr. Bowman, can you spell your last name for the  
11 record and indicate what your title is.

12 MR. BOWMAN: My last name is B-o-w-m-a-n. I am a  
13 registered civil engineer with the firm of Borcalli &  
14 Associates.

15 MR. SOMACH: Mr. Bowman, is Exhibit No. 4 an updated  
16 and accurate description of your background qualification  
17 and experience?

18 MR. BOWMAN: Yes, it is.

19 MR. SOMACH: And is Exhibit No. 22 your written  
20 testimony in this matter?

21 MR. BOWMAN: Yes, it is.

22 MR. SOMACH: I would then like to again introduce to  
23 you Mr. Reeb and ask Mr. Reeb to begin his testimony.

24 ROBERT REED,

25 having been sworn, testified as follows:

26 MR. REEB: The El Dorado County Water Agency is a  
27 special district created by the California Legislature in  
28 1959. The Agency may do any and every lawful act necessary  
29 to insure that an adequate water supply is available for  
30 any present or future beneficial use or uses for the land  
31 and residents within El Dorado County.

32 The County Board of Supervisors serve ex-officio as  
33 the Board of Directors.

34 The Agency may engage in the wholesale provision of  
35 water but is prohibited under the Agency Act from engaging  
36 in the retail supply of water. The El Dorado Irrigation  
37 District currently provides water service to about 25,000  
38 residents and agricultural, commercial, industrial and  
39 municipal customers within the contiguous zones of the  
40 primary service area, and I will refer to the general map,  
41 Exhibit 66.

42 It is the area and sphere of influence. The gray  
43 cross-hatched area is the current service area. The  
44 District, established pursuant to the California Irrigation  
45 District Law, is authorized to do any act necessary to

1 furnish sufficient water for any beneficial use. The  
2 Agency and the District entered into a Memorandum of  
3 Understanding in October of 1990 to cooperatively seek the  
4 development of new water supplies for the District service  
5 area.

6 The MOU assigns the Agency responsibility for long-  
7 range planning and program-level environmental review  
8 activities; while the District is responsible for project  
9 engineering, financing, construction and operation and  
10 maintenance activities.

11 Mr. Alcott will more fully describe the El Dorado  
12 Irrigation District's current supply and water use, its  
13 service area, among other items pertinent to this hearing.

14 Initial tasks under the MOU include the  
15 quantification of existing water supplies for the District  
16 and current customer demands. A water balance is then  
17 calculated and it was determined that District demands  
18 would exceed available supplies before the close of the  
19 decade.

20 Mr. Bowman will more fully describe the planning  
21 process.

22 Next, the Agency conducted an inventory of water  
23 rights on major rivers and streams in and adjacent to the  
24 County. This included statements of pre-1914 water rights,  
25 permits and licenses, and State filings.

26 The inventory was conducted because the availability  
27 of groundwater is limited. Therefore, the water supplies  
28 for the long-term needs of the El Dorado Irrigation  
29 District service area will come primarily from development  
30 of surface water.

31 The availability of groundwater is limited because  
32 of the geology of the west slope of the County which is  
33 comprised principally of hard crystalline rock or  
34 metamorphic rock that forms a land surface or underlies a  
35 thin soil or isolated alluvial cover.

36 Groundwater does not penetrate the hard rock mass  
37 but can be found in stress fractures and fractures in  
38 volcanic rocks caused by heating and cooling.

39 The characteristics of a fracture system control  
40 groundwater development. These characteristics include the  
41 size and location of the fractures, the intersection  
42 between the fractures and the amounts of material that  
43 might be clogging the fractures.

44 In addition, the width of the fracture generally  
45 decreases with the depth. Recharge movement and storage of

1 groundwater in the fractures of hard rock is limited and  
2 the long-term reliability of supplies is difficult to  
3 estimate with the same level of confidence as compared to  
4 the porous or alluvial aquifers of the Central Valley of  
5 California.

6 Groundwater on the western slope of the County,  
7 which the El Dorado Irrigation District service area  
8 includes, is used for domestic and small-scale agricultural  
9 purposes, but it is generally insufficient for municipal  
10 and industrial purposes.

11 The inventory of the rivers and streams was followed  
12 by the identification of alternatives which might be  
13 feasible and acceptable in terms of water supply yield,  
14 costs, and environmental impacts.

15 The goal of the Agency was to minimize environmental  
16 impacts to the greatest extent possible. The Agency  
17 identified two potential storage projects, Texas Hill Dam  
18 and Reservoir and Small Alder Dam and Reservoir. And  
19 within those exhibits are presented an Exhibit 55 and  
20 Exhibit 56, but on the general map the Alder Creek  
21 Reservoir is located in this area and the Texas Hill Dam  
22 and Reservoir in this area here.

23 MS. KATZ: In the future, and clarify here, we have  
24 to look at a transcript later and when we start talking  
25 about over here and over there, for everybody and not just  
26 Mr. Reeb, if you could identify with specificity the  
27 exhibit and then be as specific as you can in reference to  
28 what it is your are talking about on the exhibit.

29 MR. REEB: Texas Hill Dam and Reservoir is presented  
30 in Exhibit 55 and the Small Alder Dam and Reservoir is  
31 presented in Exhibit 56. The latter work, components of  
32 the South Fork American River project, was issued a license  
33 by FERC and water rights permits from the State Water  
34 Resources Control Board in the early 1980s. The project  
35 was not constructed, however, due to financial  
36 circumstances.

37 The Agency also identified two alternatives which  
38 would not involve the construction of new dams and  
39 reservoirs. These included a new Federal Central Valley  
40 Project water service contract from Folsom Reservoir which  
41 we later identified as the Folsom Reservoir project, which  
42 is presented in Exhibit 58; and consumptive water rights  
43 from FERC Project No. 184, a water and hydroelectric power  
44 generation project owned and operated by PG&E Company

1 identified as the El Dorado project, which is before you  
2 today.

3 Mr. Hannaford will more fully describe the El Dorado  
4 project.

5 Here is the Texas Hill Dam and Reservoir south of  
6 the City of Placerville.

7 MR. SOMACH: What exhibit are you referring to?

8 MR. REEB: That's Exhibit No. 55.

9 MR. SOMACH: And when you refer to *here*, you are  
10 talking about that place on that exhibit that says *Texas*  
11 *Hill Dam and Reservoir; is that correct?*

12 MR. REEB: That's correct. This map before you is  
13 Exhibit No. 58. It shows the components of the water  
14 program which was evaluated in the Environmental Impact  
15 Report.

16 As I indicated, the Small Alder Dam and Reservoir  
17 may be found in Exhibit 56. It is located on Alder Creek  
18 south of the South Fork of the American River.

19 Finally, because the primary conveyance facilities  
20 for the District are at or near capacity, the Agency and  
21 District identified the White Rock project as a means to  
22 convey new water supplies into the District service area.

23 The White Rock project provides the District access  
24 to the South Fork American River at an elevation which is  
25 conducive to service a major portion of the service area.  
26 This access is provided through Sacramento Municipal  
27 Utility District's Slab Creek Reservoir and White Rock  
28 penstock based upon agreements between SMUD, the County of  
29 El Dorado and El Dorado County Water Agency.

30 The initial agreement was entered into in 1957 in  
31 consideration of the withdrawal of a protest filed by the  
32 County of El Dorado in opposition to SMUD's proposed upper  
33 American River project.

34 A 1961 supplemental agreement included the Agency as  
35 a party.

36 Again, it is the primary duty of El Dorado County  
37 Water Agency and El Dorado Irrigation District to insure  
38 adequate water supplies for the lands and residents within  
39 the respective boundaries.

40 The amount of water sought by the Agency and  
41 District in these applications and petition is reasonable  
42 given the population growth anticipated under either the  
43 current general plan or the draft 2010 general plan.

1           We will provide you an overview of the planning  
2 process today, the issues that we evaluated, the approach  
3 or approaches taken, and the results of our evaluation.

4           The Agency, in cooperation with the District,  
5 utilized the services of Borcalli & Associates to identify  
6 existing water supplies and water use within the El Dorado  
7 Irrigation District service area.

8           The unit uses and per capita water uses were  
9 calculated for specific subareas within the service area.  
10 It is important to note that the population of El Dorado  
11 County increased by about 47 percent in the 1980s, making  
12 it the seventh fastest growing county in California.

13           Most of this growth occurred on the west slope of  
14 the County, within the El Dorado Irrigation District  
15 service area. Continued projected urban growth in the  
16 greater Sacramento metropolitan area will result in the El  
17 Dorado County population increasing by about 72 percent  
18 between 1990 and 2010. This represents an additional  
19 94,000 people in the District service area.

20           There is a critical need in the wake of such rapid  
21 growth for the County to effectively manage existing water  
22 supplies and to pursue the development of new water  
23 supplies necessary to serve the expanding population.

24           The State Department of Finance population  
25 projections were analyzed and the proposed build-out under  
26 the existing County general plan was evaluated.

27           In addition, growth forecasts for the study planning  
28 period were consistent with the projections and methodology  
29 used for El Dorado County draft 2010 general plan. There  
30 was very close coordination between the Agency planning  
31 effort and the County planning effort. It was in our  
32 interest as well as the County's to direct growth into  
33 areas which could be more economically served by new water  
34 supply projects.

35           The Agency then evaluated the water supply  
36 alternatives against the population projections and land  
37 use schemes, both in the existing and draft general plan  
38 documents to determine whether the alternatives were  
39 capable of providing sufficient quantities of water to the  
40 El Dorado Irrigation District service area on a timely  
41 basis. The Baseline Conditions Report and the Policy  
42 Objectives report prepared by the 2010 general planning  
43 team were relied upon by the Agency in evaluation of the  
44 water program.

1           These documents are referenced in the Draft EIR and  
2 the final EIR. The draft EIR is Exhibit No. 29 and the  
3 final EIR is Exhibit No. 30.

4           None of the alternative projects alone can meet  
5 projected demands. Therefore, the Agency engaged in a  
6 screening process to arrive at a range of reasonable  
7 alternatives to meet the primary program objective of  
8 providing water supply for existing entitlements and for  
9 future growth in the District service area.

10           The objectives of the Agency water program are:

11           (1) To provide sufficient water supplies to meet the  
12 projected demand of the El Dorado Irrigation District  
13 service area through the year 2020;

14           (2) To provide an affordable water supply to users  
15 in the El Dorado Irrigation District service area; and

16           (3) To protect the environment to the extent  
17 feasible given the other objectives of the water program.

18           Fifteen alternatives were identified and screened,  
19 including a no-project alternative. The process eliminated  
20 six alternatives from further consideration. The EIR  
21 focuses on the nine remaining alternatives. The Agency  
22 prepared the EIR pursuant to the provisions of the  
23 California Environmental Quality Act and CEQA guidelines.  
24 The Agency prepared a program EIR to evaluate the  
25 alternatives individually and in various combinations.

26           A project EIR was completed for the El Dorado  
27 project to enable agencies like the State Board, El Dorado  
28 Irrigation District, and others to evaluate impacts and  
29 make decisions appropriate to their duties and  
30 responsibilities.

31           El Dorado Irrigation District currently is preparing  
32 a project EIR for the White Rock project which focuses on  
33 the footprint impacts from the project components. This  
34 approach promoted by CEQA in Section 21093 enabled the  
35 Agency to give equal consideration to all of the  
36 alternatives. Concerns about the relatively high cost of  
37 the dam and reservoir alternatives, the significant  
38 environmental impacts of those projects and the length of  
39 time required to bring those types of projects on line, led  
40 the Agency to select a preferred alternative involving the  
41 increased consumptive use of the existing PG&E project and  
42 the new Central Valley Project water service contracts.

43           The White Rock project was included to convey water  
44 from both projects into the heart of the El Dorado  
45 Irrigation District service area. The preferred

1 alternative will allow the Agency and the District to meet  
2 long-term demands without constructing new dams or  
3 reservoirs.

4 The Agency identified the known areas of controversy  
5 very early in the environmental review process.  
6 Specifically the scoping process revealed a tremendous  
7 amount of concern about the impacts of the El Dorado  
8 project on Caples Lake, Medley and Silver Lakes.

9 Let me state again for the record, the entire  
10 premise of the El Dorado project is that it will not affect  
11 those lakes in any manner whatsoever.

12 Mr. Hannaford will review the operational aspects of  
13 the El Dorado project, but I would like to briefly state  
14 the assumptions involved.

15 First, PG&E will continue to operate those lakes  
16 without regard to the need of the Agency and El Dorado  
17 Irrigation District. Water will continue to be released on  
18 a hydroelectric power generation schedule which very nearly  
19 fits with El Dorado Irrigation District's projected  
20 operational requirements and demand projections.

21 And second, the hydrologic record shows that  
22 adequate water supply could be provided from the El Dorado  
23 project to satisfy future demands within the El Dorado  
24 Irrigation District service area.

25 In summation, there will be no impacts on the lakes.  
26 This is important, not only to our neighbors in Alpine and  
27 Amador Counties, but to the Agency and the District as  
28 well.

29 Public involvement in the decision-making process  
30 was a key factor in the Agency's approach to this project.  
31 Duly placed public notices regarding the project were  
32 included in newspapers of general circulation in  
33 Sacramento, Placerville, El Dorado and Amador Counties.  
34 Alpine County was covered by publication in the Tahoe Daily  
35 Tribune.

36 The Agency held informational meetings and public  
37 hearings on the draft EIR in Kirkwood in Amador County and  
38 Placerville in El Dorado County. Copies of the documents  
39 were made available to County governmental agencies and  
40 libraries, both within and outside of the project area.  
41 The Agency held a public hearing on the final EIR in  
42 Placerville. The certification of the document was held  
43 over one week so that additional responses could be  
44 prepared for comments given at that hearing. This delay

1 and subsequent response occurred above and beyond any  
2 requirement of CEQA.

3 The Agency believes it has been diligent in defining  
4 and evaluating the project. We believe the administrative  
5 record supports that belief, and further, that the  
6 administrative record supports the conclusion reached with  
7 respect to the selection of the preferred alternative.

8 The project alternatives are described in detail in  
9 Chapter 3 of the final EIR. The draft EIR and final EIR,  
10 the latter certified with appendices, are Exhibits 29 and  
11 30 respectively, as I indicated previously.

12 The final EIR for the El Dorado project was  
13 certified by the Agency Board of Directors on May 10, 1993.  
14 Findings of fact and statements of overriding  
15 considerations were adopted and are identified and  
16 presented as Exhibit 32.

17 Responses to comments not already a part of the  
18 final EIR were adopted and are identified and presented as  
19 Exhibit 33.

20 In conclusion, the joint applicants have adopted a  
21 reasonable approach to meeting projected demands in the El  
22 Dorado Irrigation District service area. The cost of the  
23 preferred alternative is much less than for other  
24 alternatives evaluated.

25 The preferred alternative has a high measure of  
26 reliability. The environmental impacts of the preferred  
27 alternative are much less, much less as compared to other  
28 alternatives. The preferred alternative does not involve  
29 the construction of any dams and reservoirs, yet it  
30 satisfies the District's demand projections through the  
31 year 2020, and quite possibly beyond.

32 The joint applicants have exercised diligence in  
33 completing their planning and review of the alternatives  
34 consistent with State laws and regulations; and finally,  
35 the El Dorado project enjoys strong local community  
36 support.

37 This concludes my presentation.

38 MR. SOMACH: Mr. Reeb, I have a couple of --

39 MR. VOLKER: Mr. Stubchaer, may I be heard briefly?

40 MR. STUBCHAER: A point of order?

41 MR. VOLKER: I have no objection to Mr. Reeb's  
42 reading of this extended summary, but I would inquire of  
43 this Board whether or not we are departing from the rule of  
44 practice that is applicable to the proceedings.



1 exhibits that you referred to. For ease of presentation  
2 and in order not to unduly prolong your testimony, you had  
3 referred to a bunch of specific project maps, but then had  
4 referred to one map, and I want to make sure I understand  
5 what some of these other exhibits that you referred to  
6 were.

7 First of all, you referred to an El Dorado project  
8 map. Is that Exhibit No. 54?

9 MR. REEB: A No.

10 Q And that's found in the final EIR for the El Dorado  
11 project?

12 A Yes.

13 Q And you referred to Exhibit No. 55, which is the  
14 Texas Hill project map; is that correct?

15 A Correct.

16 Q And that is also within the final EIR?

17 A Yes.

18 Q And I am not sure whether or not you referred to it,  
19 but Exhibit No. 57, which is the White Rock project map?

20 A Yes, that's correct.

21 Q And that's also in the final EIR?

22 A Yes.

23 Q And then, finally, components of the El Dorado  
24 County Water Agency water program, that's also -- first of  
25 all, that is Exhibit No. 58?

26 A That's correct.

27 Q And that's also within the final EIR?

28 A Yes.

29 Q And you talked about the objectives of the program  
30 which is, of course, in the final EIR. Is that also  
31 articulated in Exhibit 59?

32 A Yes, it is.

33 MR. SOMACH: With that, I would like to introduce  
34 Mr. Alcott.

35 WILLIAM ALCOTT,

36 having been sworn, testified as follows:

37 MR. ALCOTT: Bill Alcott, Manager of El Dorado  
38 Irrigation District.

39 If I could get that overhead put on, my comments  
40 will be relatively brief.

41 The purpose is to summarize the written testimony  
42 that is included as Exhibit No. 20.

43 I have attempted to humanize some of the written  
44 testimony and some comments here, and hopefully, it's  
45 useful to you, Mr. Stubchaer, the staff and the audience,

1 to understand El Dorado Irrigation District a little bit  
2 better.

3 I would like to start by just recounting very  
4 briefly the history behind water development in El Dorado  
5 generally. First, the urgent need for water in El Dorado  
6 was to facilitate mining, particularly gold mining, much as  
7 elsewhere in the foothills.

8 The mining industry gave way to agricultural  
9 pursuits in the late 1800s and by 1920 agriculture became  
10 the pre-eminent user of water. And as has been experienced  
11 elsewhere in the foothills, agriculture is slowly giving  
12 way to domestic uses, and at this point in time, we have  
13 basically a balance of 50-50 between the domestic use and  
14 agricultural use in terms of total water usage in a given  
15 year.

16 El Dorado Irrigation District was established in  
17 1925. It followed several other water agencies as they  
18 were known mostly in the past. We currently have a  
19 statutory responsibility to meet the needs of our existing  
20 customers which we distinguish from meeting the needs of  
21 future customers by a certain policy the Board has, but we  
22 have a responsibility to meet the needs of both. And while  
23 we are not a land claimant or development-approving agency,  
24 we are responsible for providing for the retail sale of  
25 water within our service area.

26 This is an overhead of Exhibit 35, and if I might, I  
27 would like to orient folks a little bit. Our service area  
28 is rather large in size. Currently the service boundary is  
29 identified with this cross line.

30 MR. SOMACH: When you say *this cross line*, can you  
31 describe that in more detail?

32 MR. ALCOTT: It is essentially an area of 220 square  
33 miles in size. The elevation in El Dorado Hills is as low  
34 as 400 feet. The elevation in Pollock Pines is up as high  
35 as 4300 feet.

36 We have a system of over 900 miles of water  
37 pipelines delivering water to 25,099 customers, all of  
38 which are metered.

39 MR. SOMACH: And the service area boundary that you  
40 are referring to, it is indicated on the map; is that  
41 correct?

42 MR. ALCOTT: Yes, it is. I distinguished the  
43 service area boundary from the sphere of influence boundary  
44 which is located here.

1 MR. SOMACH: And that also is pointed out on the map  
2 itself?

3 MR. ALCOTT: Correct.

4 To give you a preview for the size, on Highway 50  
5 just past the Folsom exit, you are in our service area  
6 until you pass through Pollock Pines and head towards  
7 Strawberry.

8 The two major watersheds were, in fact, defined by  
9 the Cosumnes River watershed to the south and the American  
10 River watershed to the north.

11 The absence of any reliable groundwater causes the  
12 District to rely solely on surface water supply and we have  
13 four. We have Folsom, PG&E forebay, both taking water from  
14 the American River watershed, and then we have two sources,  
15 Crawford Ditch and Sly Park, taking water from the Cosumnes  
16 watershed. The oldest supply is Crawford Ditch which takes  
17 water from the North Fork of the Cosumnes as well as a  
18 tributary, Clear Creek, and delivers water to a treatment  
19 filtration plant in an area called Pleasant Valley. That  
20 has a calculated safe yield of about 2400 acre-feet.

21 That was initially developed for mining purposes and  
22 is currently used for domestic and agricultural purposes.

23 The other is Sly Park Reservoir which has a storage  
24 capacity of 41,033 acre-feet and is a unit of the Central  
25 Valley Project. It is solely operated and maintained by El  
26 Dorado Irrigation District at the pleasure of the Bureau of  
27 Reclamation.

28 The PG&E forebay, as will be discussed probably  
29 quite extensively through the hearings, is a supply  
30 afforded to us by virtue of the 1919 contract between the  
31 predecessor to El Dorado Irrigation District and the  
32 predecessor to PG&E. We receive 15,080 acre-feet annually,  
33 up to that amount, based on a contract schedule that  
34 controls rates of flow. That is our second-most  
35 significant source of supply.

36 And finally, Folsom Reservoir, completed in 1956,  
37 provides us with a contract entitlement of 7,550 acre-feet.  
38 We currently rely for planning and water supply management  
39 purposes on a yield of 3,750 acre-feet because of the  
40 restrictions we suffer because of the drought and the  
41 Bureau's operating policies.

42 So, those are our four supplies. The total system  
43 annual yield from all four sources is just over 38,800  
44 acre-feet.

1           The only point I make on this before I move on is  
2 that three of the sources, Crawford Ditch, Sly Park and the  
3 forebay are all located in the eastern half of our service  
4 area. Folsom, obviously, provides water to our western  
5 service area primarily El Dorado Hills.

6           As Mr. Bowman will point out, our projected growth  
7 is in large part located in the western part of our service  
8 area and is one of the reasons that the White Rock project  
9 is so well matched to our needs.

10          I would like to cover our water conservation for a  
11 little bit, and I would like to talk of conservation in  
12 terms of the SOFAR water rights permit and the associated  
13 Decision 1587. It's a good benchmark. It's identified in  
14 the testimony and it serves as a good point of departure  
15 for me to show what the District has done with regard to  
16 conservation efforts.

17          The SOFAR permit itself, as well as the decision and  
18 associated documents, identified a goal for El Dorado  
19 Irrigation District to achieve in terms of conservation,  
20 and that goal was to save up to 12,000 acre-feet of water,  
21 and they felt that was reasonable given system losses, some  
22 flow monitoring problems and uses in the District, and that  
23 type of thing.

24          It's easy for me to be here and identify that EID  
25 has met the goal, in fact, exceeded it in a rather  
26 significant way, and we have accomplished that goal by  
27 doing seven things in particular.

28          First, most noteworthy, we replaced 20 water lines  
29 since 1986. These are full replacement capital improvement  
30 projects at an expense of 5.2 million dollars.

31          Secondly, we have improved our ditch system. I  
32 pointed out in the written testimony we have in excess of  
33 80 miles of ditches. While we are not necessarily proud  
34 owners of them, we are responsible for them and we have  
35 invested over 6 million dollars on ditch improvements.

36          Reservoir linings and covering as a public health  
37 implication as well as water conservation benefit. We have  
38 over 20 reservoirs built into our system in order to handle  
39 the pressure changes from 4300 to 400 feet in elevation,  
40 and we are lining and covering one a year. In the past six  
41 years we spent 1.9 million dollars on those improvements.

42          Operational enhancement -- operational enhancement  
43 for folks that run a water operation, they are the ones  
44 that are hard to define because people don't tell you where  
45 they're mismanaging the system. You never know where the

1 water is going. We have invested 1.2 million dollars over  
2 the past six years on automated control systems and a full  
3 monitoring system and we are able to detect location of our  
4 water and where it may be lost with much more specificity  
5 than we have in the past.

6 With a wry smile I will point with some pride to the  
7 fact that we are fully metered. At the end of 1992, we  
8 have 25,099 active accounts and each and every one of them  
9 is metered. That carries with it an obligation to maintain  
10 that metered system and those meters have an accuracy life  
11 of about 20 years. Consequently, on an annual basis we  
12 replace about six percent of our meters, which last year  
13 called for the replacement of 1400 meters. We have been  
14 doing that annually.

15 Another program we have which we point to with some  
16 pride is an *Irrigation Management Service* called IMS. It  
17 was the first program in the state. In essence, what it  
18 does is we have several people that go out, and through  
19 measuring devices can determine with a good accuracy the  
20 water requirement of various crops. This program covers  
21 3,000 acres of crop land on 300 different ranches.

22 In a letter from State Board staff signed by Mr.  
23 Pettit in 1984, the District had documented a savings of  
24 1650 acre-feet, and since then, we believe we are saving  
25 about 2,000 acre-feet annually as a result of that program.

26 MR. SOMACH: Mr. Alcott, is that Exhibit 41?

27 MR. ALCOTT: Yes.

28 Then, finally, as elsewhere in the state, we are  
29 looking at reclaimed water as a potential source of  
30 minimizing the demand on potable water.

31 We have operated a reclaim system in El Dorado Hills  
32 since 1980, and we have been saving about 300 acre-feet a  
33 year as a result of that project.

34 Because of agreement with a developer and the  
35 expenditure of 7 million dollars, we now have two plants  
36 with the ability to reclaim 2300 acre-feet of water a year.

37 Those seven different areas account for a large part  
38 of our water conservation over the past six or seven years.

39 What is the effect of all this? Well, first, I  
40 point to the fact that our unaccounted for water in 1992 is  
41 down to 21.6 percent. That is less than half the amount  
42 that was called out in Decision 1587, so we have made  
43 significant strides in those ten years. That is validated  
44 in large part by the reduction in household water use. Our  
45 household use was identified as 1.0 acre-feet per household

1 in Decision 1587. Our statistic for 1992, which are rather  
2 accurate, shows a use of .41 acre-feet, so 41 percent of  
3 what was anticipated and specified ten years ago.

4 To put that in a little more prospective, SOFAR  
5 documents identify a goal of the District achieving a  
6 household use of .62 acre-feet in the year 2005, so we have  
7 exceeded that significantly 13 or 14 years ahead of  
8 schedule.

9 The total savings has been identified at 16,000  
10 acre-feet, 4,000 above the stated goal of 12,000, and  
11 that's in spite of the fact we have had 7,400 new customers  
12 since 1982.

13 And we believe that's in large part attributed to  
14 the fact we spent over 15 million dollars on water  
15 conservation, which I like to call water efficiency  
16 projects.

17 And finally, I would simply like to note that there  
18 are in Exhibits 39 and 40 recognition by the Governor, the  
19 Bureau of Reclamation, the Department of Water Resources  
20 for our water conservation effort.

21 In conclusion, it is rather clear as Manager of the  
22 Agency that we need water. I can understand folks saying  
23 we have until 1997, but there is another spin on that, and  
24 you should be aware, and that is for three of the last four  
25 years we have had a moratorium on service connections. We  
26 have twice declared water shortage emergencies under Water  
27 Code Section 350, and as a result terminated new  
28 connections.

29 We have an acute need in point of numbers and our  
30 planning numbers indicate we have supply available until  
31 1997. The present operation was a policy decision. That  
32 isn't always the case.

33 Second, we exceeded the SOFAR water conservation  
34 goal of 12,000 acre-feet by saving more than 16,000 acre-  
35 feet in large part due to the 15 million dollar  
36 expenditure.

37 Third, and last, there's strong El Dorado Irrigation  
38 District customer and community support for these  
39 applications and the White Rock project in general.

40 In fact, because of the huge structural requirement  
41 and specifically avoiding the need of a dam and reservoir  
42 which seems to engender a great amount of consternation and  
43 concern, the project as proposed has been referred to by  
44 members of the environmental community as being the most  
45 *benign water project* the State has yet seen. And that

1 comes to me by way of several folks, members of the Sierra  
2 Club and other organizations with El Dorado County, and  
3 with that, I will conclude.

4 Thank you.

5 MR. SOMACH: I would like to call on Jack Hannaford  
6 now for his testimony.

7 JACK HANNAFORD,  
8 having been sworn, testified as follows:

9 MR. HANNAFORD: My name is Jack Hannaford. I am a  
10 civil engineering consultant, a consultant to the El Dorado  
11 County Water Agency.

12 My qualifications have been outlined in Exhibit 3  
13 and the written testimony is Exhibit 21.

14 The objectives of this verbal testimony are first to  
15 describe the proposed project to meet El Dorado Irrigation  
16 District's need for supplemental water; and second, to  
17 outline perceived project operation to meet the 2020 demand  
18 level needs.

19 With regard to present and projected demand, Exhibit  
20 45 and the presentation of testimony by Mr. Bowman which  
21 will follow mine, outline the projected needs for the  
22 Placerville or EID service area.

23 The amount of demand with some corrections for 1990  
24 is shown as 34,090 acre-feet. By 2020, that demand will  
25 have risen to 59,888 acre-feet, or approximately 25,800  
26 acre-feet of increase. The demands in Exhibit 45 indicate  
27 the demand by area within the District.

28 Referring to the map, which is Exhibit 66, the  
29 present District service area as described by Mr. Alcott is  
30 the shaded or gray area, and the intended place of use of  
31 water sought under these applications includes the entire  
32 area outlined by this heavy line.

33 The District, for purposes of analysis, has been  
34 broken down into three service areas. The first is the  
35 east service area which lies roughly to the east of the  
36 City of Placerville and goes to the extreme eastern portion  
37 of the District. The second is the west service area which  
38 lies to the west of the City of Placerville. There is  
39 another area which is a subsurface area, the El Dorado  
40 Hills subsurface area, which can be served from Folsom  
41 Reservoir which lies in the far western portion of the  
42 county.

43 Mr. Alcott touched on the existing water supply but  
44 I would like to repeat a few items in there. The major  
45 source of supply is Sly Park Reservoir located in the far

1 eastern portion of the service area. This reservoir has a  
2 safe yield of approximately 18,000 acre-feet. It's part of  
3 the Central Valley Project, but maintained and operated by  
4 El Dorado Irrigation District.

5 A second major source of supply results from a 1919  
6 agreement with PG&E Company. The water from that source is  
7 taken at El Dorado forebay and it represents about 15,080  
8 acre-feet annually.

9 These two major sources are in the far eastern  
10 portion of the service area.

11 A third source mentioned by Mr. Alcott is the  
12 Crawford Ditch which diverts out of the North Fork Cosumnes  
13 River and brings water into the southern portion of east  
14 service area. The yield is in the order of 2,000 to 2400  
15 acre-feet annually from this source.

16 The remaining source which is used to serve the far  
17 western portion of the area, the El Dorado Hills service  
18 area, is Folsom Reservoir. Water is pumped from Folsom,  
19 treated, and distributed in the far western portion of the  
20 area. The contract amount with the U. S. Bureau of  
21 Reclamation is 7,550 acre-feet annually, but as Mr. Alcott  
22 pointed out, in a year like 1977, the District was  
23 permitted to take only about 50 percent of that total  
24 contract amount.

25 The total system safe yield comes out to about  
26 38,600 acre-feet, which isn't the total of all the  
27 individual amounts that I have given you, but it represents  
28 the amount for the entire system operation.

29 It is interesting to note in this system that only  
30 about 47 percent of the total supply is from storage or  
31 from storage operated by El Dorado Irrigation District.

32 I would like to touch a little bit on the 1919  
33 agreement. This agreement was made between predecessors of  
34 PG&E Company and El Dorado Irrigation District. It was the  
35 result of an exchange of facilities which the El Dorado  
36 Irrigation District's predecessor owned in the upper South  
37 Fork for a guaranteed water supply with no limitation on  
38 time.

39 The quantity of water involved is 15,080 acre-feet  
40 annually. The cost was specified in 1919, and the  
41 agreement speaks specifically to certain facilities in the  
42 system at that time.

43 There were two reservoirs at the time PG&E's  
44 predecessor acquired the system. One was at Silver Lake

1 and at that time the total storage was about 5,000 acre-  
2 feet.

3           There was another reservoir with a total storage of  
4 about 2,000 acre-feet at Echo Lake which is actually in the  
5 Tahoe drainage but is diverted by a diversion into the  
6 South Fork American.

7           In addition, there was a direct diversion at the  
8 site of the present PG&E-El Dorado diversion, and a ditch  
9 to take water into the service area of the El Dorado  
10 Irrigation District's predecessor, El Dorado County Water  
11 Company.

12           The facilities that I have just mentioned are those  
13 included to provide for the 15,080 acre-feet to El Dorado  
14 Irrigation District, and as a consequence, the storage  
15 amounts at Silver Lake and Echo Lake were not included in  
16 these applications.

17           The present supply is to take the District out to  
18 about 1997 without severe deficiencies. However, it is  
19 very apparent that it will not be practical or feasible to  
20 obtain direct diversion which would significantly improve  
21 El Dorado Irrigation District's water delivery capability.  
22 It's a necessity for El Dorado to have access to storage in  
23 order to be able to redivert from the river on a timely  
24 basis. This would be storage that is not presently  
25 dedicated to consumptive use so that the District should be  
26 able to acquire rights for consumptive use on that storage.

27           The proposed El Dorado project is intended to obtain  
28 water from the existing PG&E facilities in the South Fork  
29 American system. These facilities are a part of PG&E's  
30 FERC Project 184. They include existing storage. There's  
31 an increase in storage at Silver Lake that occurred after  
32 1919. That is the amount that has been filed on which is  
33 6,000 acre-feet. There is storage at Caples Lake with a  
34 total storage amount of about 21,581 acre-feet, and a  
35 storage reservoir at Medley Lake or Lake Aloha. The amount  
36 filed on there is 5,350 acre-feet.

37           The PG&E system operates with release of water from  
38 the upper lakes as well as the natural flow of the stream  
39 which is diverted at the PG&E-El Dorado diversion. This is  
40 located near Kyburz on the South Fork of the American.

41           The PG&E-El Dorado Canal follows the left bank of  
42 the river at approximately the 3800-foot elevation. It  
43 picks up some en route diversions, one of which has been  
44 included in these applications, the Alder Creek diversion.

1 Water continues down along paralleling the South  
2 Fork to the PG&E forebay, El Dorado forebay, located near  
3 Pollock Pines. At that point, water taken by El Dorado  
4 Irrigation District is diverted from the system and the  
5 remainder falls back into the South Fork of the American  
6 River at El Dorado powerhouse.

7 MR. SOMACH: Mr. Hannaford, if I could just stop you  
8 there, I want to clarify a point and that is until that  
9 last diversion, where was that last diversion again, if you  
10 can describe it at the PG&E forebay?

11 MR. HANNAFORD: Yes, there is a turnout at PG&E's  
12 forebay.

13 MR. SOMACH: Until that point, in essence, the El  
14 Dorado project itself merely relies upon the releases that  
15 are made by PG&E; is that correct?

16 MR. HANNAFORD: That's right.

17 MR. SOMACH: It just assumes normal historic  
18 releases?

19 MR. HANNAFORD: Yes.

20 MR. SOMACH: Go ahead.

21 MR. HANNAFORD: There is one more element to the  
22 PG&E system and that is Chili Bar powerhouse located some  
23 distance downstream from the El Dorado powerhouse. It's  
24 located on the afterbay reservoir for SMUD's White Rock  
25 power plant.

26 El Dorado has filed for the storage which I  
27 mentioned on the three lakes, and in addition, for direct  
28 diversion from the South Fork American River at the Kyburz  
29 diversion point, the PG&E's El Dorado diversion and at the  
30 Alder Creek site.

31 MR. SOMACH: And those diversions, Mr. Hannaford,  
32 are merely the same diversions that PG&E has historically  
33 made; is that correct?

34 MR. HANNAFORD: That is right, the filing is on the  
35 same water.

36 In addition to the diversion points, there are a  
37 number of rediversion points included in the El Dorado  
38 applications. The first rediversion point is the PG&E  
39 diversion near Kyburz, which is intended to redivert water  
40 released from storage from the upper reservoirs. There is  
41 a second point of rediversion at Sly Park Lake. It's  
42 possible to run water through a tunnel from PG&E's canal to  
43 Sly Park Reservoir. This is called the Hazel Creek tunnel  
44 and I will mention the use of that shortly.

1           An additional rediversion point is at SMUD's Slab  
2 Creek Reservoir where the water would enter SMUD's White  
3 Rock tunnel and could be taken under the 1957 and 1961  
4 SMUD-El Dorado agreement for diversion into the center of  
5 the District's service area to a location called Bray water  
6 treatment plant. This is a proposed water treatment plant.

7           There would be roughly six miles of pipeline into it  
8 from SMUD's White Rock penstock into the Bray treatment  
9 plant.

10          A final point of rediversion is at Folsom Reservoir.  
11 The District currently has a pumping plant on Folsom  
12 Reservoir and either that plant or an adjacent plant could  
13 be constructed to provide additional water into this El  
14 Dorado Hills subsurface area.

15          There are two elements to the District's proposed  
16 supplemental water supply. The first is the El Dorado  
17 project which entails acquisition of water rights. The  
18 second is construction of the White Rock project, El Dorado  
19 Irrigation District's White Rock project, which entails  
20 bringing water from the SMUD White Rock penstock into Bray  
21 water treatment plant.

22          Water from these applications would yield about  
23 17,000 acre-feet at the White Rock project.

24          MR. SOMACH: Now, Mr. Hannaford, when you talk about  
25 yield, are you using that in the traditional sense of  
26 operating a system so it would yield something? How did  
27 that 17,000 acre-feet get developed?

28          MR. HANNAFORD: That represents the amount of water  
29 that could be taken under PG&E's historic schedule of  
30 releases and operation at White Rock on a basis consistent  
31 with the El Dorado timing for needs, and that would  
32 represent the amount in a very critical year like 1977.

33          Beyond about 17,000 acre-feet at that location,  
34 timing becomes critical. There is still more water  
35 available from the PG&E system, but it is not necessarily  
36 released at a time where it would be of value to El Dorado  
37 Irrigation District to take at White Rock. The El Dorado  
38 project is really a two-phased project. The first phase  
39 represents that period of time from the present out until  
40 the White Rock project is constructed, the project to  
41 convey water from the South Fork into Bray treatment plant.  
42 This would be about 1997.

43          The strategy used in evaluating the operation prior  
44 to completion of White Rock was to draw more heavily on Sly  
45 Park and depend on water from the current applications only

1 to meet needs if we should happen to run into a very dry  
2 year like 1977.

3 The probability of encountering a year equally  
4 critical to 1977, between now and 1997, or even 2000, is  
5 fairly low. If the White Rock project should not be  
6 completed before 2000 and we should encounter a year  
7 similar to 1977, it would require about 3300 acre-feet of  
8 water from the system, probably taken at Hazel Creek tunnel  
9 into Sly Park Reservoir in order to meet District demands.

10 MR. SOMACH: Mr. Hannaford, we are talking about a  
11 demand in addition to the water that the District has  
12 between now and what date?

13 MR. HANNAFORD: At the year 2000. Until 1997, El  
14 Dorado has sufficient water. By 2000, if a year like 1977  
15 is encountered, then an additional 3300 acre-feet will be  
16 required in the El Dorado Irrigation District system.

17 MR. SOMACH: So, from now until 2000, we are talking  
18 about utilization of this supply for an additional, about  
19 3300 acre-feet of water; is that correct?

20 MR. HANNAFORD: Yes, and the probability of that  
21 occurring is very very small, but it does provide a degree  
22 of protection that would allow El Dorado to operate Sly  
23 Park Reservoir for greater than its present safe yield.

24 If El Dorado were to require water before the  
25 completion of White Rock project, that water would bypass  
26 the downstream powerhouses and El Dorado recognizes that.

27 The next step would be Phase 2, and that would be  
28 after completion of the diversion from White Rock and the  
29 conveyance to Bray treatment plant. Of course, varying  
30 amounts of water would be taken as demands increase. These  
31 varying amounts would depend upon the level of demand and  
32 upon the hydrologic conditions of each individual season.

33 Sierra Hydro-Tech has prepared several reports  
34 related to this issue. Exhibit 46 prepared November 9,  
35 1992, is entitled *White Rock Project El Dorado Water*  
36 *Requirements* and that's included as Exhibit 46 here. This  
37 is only one of a number of reports which was prepared at  
38 the request of SMUD for information on El Dorado's  
39 potential take.

40 I would like to outline the assumptions that were  
41 used in determining how much water would be required from  
42 the system and how long the water under these applications  
43 would last or would provide a supplemental source.

44 All of the analysis that I am going to discuss here  
45 today is for the year 2020, which is our target planning

1 date. First, the water sources by service area are a  
2 fairly important factor in developing the analysis of  
3 demand and supply.

4 The east service area roughly lies east of  
5 Placerville and by the year 2020 would be served by Sly  
6 Park Reservoir by 12,500 acre-feet annually from the PG&E  
7 1919 agreement and by Crawford Ditch coming in from the  
8 south.

9 The west service area would be served by the  
10 remainder of the water from the 1991 agreement, which would  
11 be 2,580 acre-feet by any surplus in Sly Park Reservoir  
12 conveyed through the District and to the Bray treatment  
13 plant, by any surplus from Crawford Ditch and by  
14 supplemental water from these present applications.

15 El Dorado Hills would normally be served by the  
16 7,550 acre-feet of USBR contract water, which could be  
17 reduced to 50 percent in a critically dry year, and in  
18 addition, would be served by water under these applications  
19 reregulated at Folsom.

20 Another assumption was that the system would be  
21 operated to the historic hydrological period of record,  
22 although only the period 1935 to 1991 seems to be most  
23 representative of how PG&E's system would be operated..

24 The next assumption --

25 MR. SOMACH: Mr. Hannaford, is that historic  
26 operation of PG&E lakes contained in Exhibit No. 47, which  
27 is also in the EIR?

28 MR. HANNAFORD: Yes, it is.

29 The next assumption was that there would be no  
30 reoperation of PG&E's reservoirs or of the PG&E system.  
31 Water would be taken on the same time basis that it has  
32 been diverted and utilized by PG&E in its past history.  
33 Any month of deficiency water would be taken from other El  
34 Dorado Irrigation District sources.

35 We could have taken additional water from Folsom,  
36 but that wasn't done in this study.

37 The only other source that El Dorado Irrigation  
38 District has Sly Park Reservoir and consequently, it  
39 represented the source to make up deficiencies in the west  
40 service area when water wasn't available from PG&E at this  
41 point.

42 I would like to point out here that under Phase 2 no  
43 additional water is taken. None of the water under these  
44 applications is taken at either the PG&E-El Dorado forebay  
45 or at the Hazel Creek tunnel. Once the White Rock

1 conveyance is completed, there would be no additional water  
2 from PG&E sources or from these applications taken either  
3 from the PG&E ditch at Hazel Creek tunnel or from the  
4 forebay.

5 MR. SOMACH: And the maximum degree that would be  
6 taken from those facilities, at least through the year  
7 2000, would be 3300 acre-feet?

8 MR. HANNAFORD: Yes, under Phase 1.

9 The next assumption is that all PG&E reservoirs and  
10 facilities are existing. There is no construction or  
11 modification, physical modification of anything in the PG&E  
12 system.

13 Next, the study was designed to minimize dry year  
14 take at White Rock even though that might increase the  
15 average take at White Rock somewhat.

16 The next item is no water is taken at Hazel Creek  
17 tunnel. We just went through that, except on an emergency  
18 basis. So, in the event that there should be some kind of  
19 a system failure someplace, it would be physically possible  
20 to take additional water under these applications from the  
21 PG&E forebay or at Hazel Creek tunnel at some significant  
22 loss to PG&E at the El Dorado powerhouse.

23 I would like to summarize the results. First, the  
24 water supply that is being sought under these applications  
25 is sufficient to meet the 2020 demand levels.

26 Second, the major restriction is the monthly  
27 distribution of water available to El Dorado under these  
28 applications, not on the total annual volume. There is  
29 more than enough annual water available.

30 El Dorado has no means of storing that water and as  
31 a consequence, the restriction is a result mostly of time  
32 of the release of water from the upper lakes rather than of  
33 the total volume.

34 I would like to summarize the 2020 demand level take  
35 at White Rock and at Folsom. In an average year the amount  
36 of water taken at White Rock would be 10,098 acre-feet  
37 annually. The amount of water taken at Folsom would be  
38 4,864 acre-feet for a total of 14,962 acre-feet annually.  
39 That's at the 2020 level of demand.

40 Now, under 1977 conditions, which turned out to be  
41 the most critical season, there was a two-year drought in  
42 1976 and 1977, and this is a water year amount, the amount  
43 necessary to be taken at White Rock was 13,541 acre-feet.  
44 This was about 150 acre-feet shy of what was actually



1 Q Has El Dorado, again to your knowledge, entered into  
2 any contract or agreement with PG&E that would require PG&E  
3 Company to operate those facilities to enable El Dorado to  
4 exercise control over the water that we have applied for  
5 here in the context of those facilities?

6 A No.

7 Q And the analysis that you undertook in terms of the  
8 El Dorado project, it assumes then all of it with the  
9 limited ability of El Dorado to control PG&E's operation;  
10 is that right?

11 A Yes, it was assumed that El Dorado would operate  
12 within the confines of PG&E's historic releases.

13 MR. SOMACH: Okay, that's fine. Thank you.

14 Then, we would like to call El Dorado's last witness  
15 in this panel, and that's Mr. Bowman.

16 ROBERT BOWMAN,

17 having been sworn, testified as follows:

18 MR. BOWMAN: My name is Robert Bowman, with Borcalli  
19 & Associates. We are consulting civil engineers to El  
20 Dorado County Water Agency. I am the engineer in charge of  
21 developing water demand projections for the El Dorado  
22 Irrigation District service area for the anticipated  
23 growth.

24 During my verbal testimony, I shall be referring to  
25 Exhibits 48 and 62 through 65.

26 In October, 1989, El Dorado County Water Agency  
27 adopted its Statement of Purpose, Issues, Goals and  
28 Objectives. Included in this statement is the goal to  
29 insure that adequate water supplies are available to serve  
30 all present and future beneficial uses within the County.

31 In fulfillment of this goal, the Agency entered into  
32 an agreement with Borcalli to prepare a countywide water  
33 resources development and management plan, or a water plan.

34 The scope of this work included establishing  
35 existing water use and future water needs for the five  
36 public purveyors within the county of which El Dorado  
37 Irrigation District is the largest in terms of demand.

38 A number of goals and objectives were adopted by the  
39 Agency Board of Directors to guide the formulation of the  
40 water plan. One of the objectives stated that water  
41 resources planning and land use planning will be closely  
42 coordinated and it will result in a consistent approach to  
43 the provision of public services and infrastructure.

44 With this objective in mind, the water plan was  
45 developed to maintain such consistency with the County's

1 general plan efforts as well as the watermaster planning  
2 efforts of EID.

3 I would first like to briefly discuss the County's  
4 land use planning process since growth forecasts are  
5 fundamental to the develop of water demand projections.

6 Land use and growth within the western slope has  
7 been guided by the existing El Dorado County general plan.  
8 The general plan is comprised of ten elements prepared by  
9 the community development departments and were separately  
10 adopted by the Board of Supervisors between 1978 and 1990.

11 The general plan includes 24 area plans that were  
12 developed to update and refine the land use elements  
13 adopted in 1969.

14 The area plans include goals and policies that  
15 pattern land use within the specific subareas to minimize  
16 impacts to the natural environment, agricultural activities  
17 and public services.

18 As Mr. Reeb indicated, El Dorado is one of the  
19 fastest growing counties in the state. In response to  
20 that, the County began to update the existing general plan  
21 with the development of the El Dorado County 2010 general  
22 plan in August of 1989.

23 Seven planning principles were established to  
24 reflect the residents' visions and goals regarding the  
25 future of the County based upon input received at community  
26 workshops held as part of the 2010 general plan process.

27 The planning principles were then used as the  
28 foundation for creating the conceptual land use plan which  
29 identified the land use designations for the region.

30 The growth forecasts for the water plan are  
31 consistent with the projections and methodology used for  
32 the draft 2010 general plan.

33 The population projections were developed by  
34 economic and planning systems, a subconsultant to the 2010  
35 general plan team.

36 The projections are based upon the average annual  
37 growth rate predicted for the region by the State of  
38 California Department of Finance. The Department of  
39 Finance projections are recognized by many agencies,  
40 including the State Department of Water Resources, as a  
41 standard for planning purposes.

42 The distribution of population within El Dorado  
43 Irrigation District service area and LAFCO's sphere of  
44 influence, that's the Local Agency Formation Commission of

1 El Dorado County, are based upon the projected market  
2 growth for the region.

3 The service area and boundaries are shown on Exhibit  
4 49, which if we could put that up -- what you see on the  
5 overhead is Exhibit 48. It shows the water purveyor  
6 boundaries and spheres of influence, LAFCO's sphere of  
7 influence in the southwestern portion of the County. You  
8 will see this is the largest purveyor area of El Dorado  
9 Irrigation District. It is the red cross-hatched area  
10 which is generally bounded on the south by the Cosumnes  
11 River, on the north by the South Fork American River, to  
12 the west by the El Dorado/Sacramento County line, and to  
13 the east, just east of Sly Park Reservoir.

14 The open areas within the sphere of influence  
15 represent the existing service area.

16 Traffic analysis zones developed by the consultant  
17 team for the 2010 general plan were used as the smallest  
18 unit of measure for allocating growth in accordance with  
19 the conceptual plan.

20 Population projections for 1990 through 2020 are  
21 summarized in the table identified as Exhibit 62. The  
22 growth trends are depicted graphically in a chart included  
23 as Exhibit 63, which is on the overhead.

24 As you can see, the lower curves here are for the  
25 east side and west side of El Dorado Irrigation District.  
26 This curve here, the lower curve, represents the east side  
27 projection trend and as you can see, the incremental growth  
28 from 1990 through 2020 is about half as much as the  
29 incremental growth projected for the west side.

30 As you can see, the resulting forecast indicates a  
31 total population increase of approximately 150,000 people  
32 by the year 2020. This represents an average annual growth  
33 rate within the El Dorado Irrigation District service area  
34 of about three percent per year.

35 The growth forecast provided a foundation for  
36 establishing water demand projections. Water demands were  
37 developed for three main categories of use, including  
38 urban, agricultural and system losses.

39 Existing water use and future water needs generally  
40 east and west of the proposed Bray water treatment plant  
41 were evaluated to enable El Dorado to investigate the  
42 various issues associated with the White Rock project.  
43 These issues include the impacts the project will have on  
44 the existing distribution system, operational aspects of

1 the proposed facility, including costs, and a time for  
2 requiring the project to be brought on line.

3 Therefore, El Dorado Irrigation District service  
4 area was divided into the east side and west side subareas  
5 with the west side being that portion of the District that  
6 could be served from the treatment plant by gravity flow.

7 The Bray water treatment plant is one of three main  
8 components of the White Rock project. Urban water demand  
9 criteria were developed for the east side and west side of  
10 El Dorado Irrigation District on an acre-foot per capita  
11 basis.

12 The criteria for the District's unique areas are  
13 consistent with the data provided in the report of actual  
14 metered consumption prepared by El Dorado Irrigation  
15 District.

16 The water demand criteria for the City of  
17 Placerville, which is within El Dorado Irrigation  
18 District's east side provided a report of actual metered  
19 consumption.

20 All of the unit urban demands include an allowance  
21 for commercial and industrial uses based upon historical  
22 data.

23 El Dorado Irrigation District has been implementing  
24 both mandatory and voluntary water conservation since the  
25 1976-77 drought. The effects of these measures are  
26 reflected in the comparably low per capita demand  
27 established from the available consumption data.

28 To illustrate this, 1992 consumption data indicates  
29 that the single-family residential customers in the El  
30 Dorado Hills of El Dorado Irrigation District used  
31 approximately .54 acre-feet per dwelling unit. This  
32 equates to an average daily use of approximately 172  
33 gallons per capita per day.

34 By comparison, records from the sampling of metered  
35 single-family residential customers in the City of Davis,  
36 an area also known to have significant water conservation  
37 measures, indicated an average daily use of approximately  
38 255 gallons per capita per day.

39 The El Dorado Irrigation District data does,  
40 however, represent a period during the more recent drought  
41 and some degree of rebound in water use is anticipated.

42 The criteria was, therefore, adjusted accordingly to  
43 account for normalized use. Even under such conditions,  
44 the single-family water demand in El Dorado Hills would be

1 approximately 29 percent less than that for the City of  
2 Davis.

3 Agricultural water demand projections for El Dorado  
4 Irrigation District are consistent with those presented in  
5 the water needs evaluation for the American River watershed  
6 investigation prepared by the Department of Water Resources  
7 in September of 1990.

8 The water demands represent applied water use and  
9 have been distributed to the east side and west side of El  
10 Dorado Irrigation District in accordance with the  
11 District's findings relative to the division of demand east  
12 and west of the Bray Reservoir site.

13 Unaccounted for water use for system losses within  
14 El Dorado Irrigation District include conveyance losses  
15 such as evaporation and seepage associated with storage,  
16 transmission and delivery of water through open reservoirs  
17 and ditches, carriage losses resulting from the excess  
18 water necessary to provide flow for regulation and  
19 diversion by users at any location along the ditch system,  
20 and distribution system losses between the treatment plant  
21 and the customer resulting from pipeline leakage or any  
22 other water that does not pass through the customer meters.

23 Various conservation programs completed by El Dorado  
24 Irrigation District over the past ten years have  
25 successfully identified and corrected a significant portion  
26 of the District's unaccounted for water use.

27 Ongoing efforts, including pipeline replacement,  
28 meter change-out, improved system of operation and  
29 management, and supervisory control and data acquisition or  
30 data programs, are expected to further reduce losses.

31 The net result of these efforts is an anticipated  
32 reduction in system losses from approximately 27 percent of  
33 the total water diverted in 1990 to 15 percent by the year  
34 2000 and beyond.

35 This goal is certainly reasonable in view of the  
36 reduction to the 21.6 percent that Mr. Alcott stated the  
37 District attained in 1992.

38 The water demand for projections for El Dorado  
39 Irrigation District for 1990 through the year 2020 are  
40 summarized in the table identified as Exhibit 64, and are  
41 shown graphically on a chart identified as Exhibit 65,  
42 which is also on the overhead.

43 As you can see from the upper curve which represents  
44 the total demand projection for El Dorado Irrigation  
45 District, the total demand is projected to grow from 34,00

1 acre-feet per year in 1990 to approximately 60,000 acre-  
2 feet per year by the year 2020. This represents a 76  
3 percent increase.

4 That concludes my testimony.

5 MR. SOMACH: Prior to calling our next panel, what I  
6 would like to do, Mr. Stubchaer, is just make sure that  
7 some of the exhibits we didn't specifically refer to here  
8 are validated by these witnesses as being true and correct.

9 Mr. Hannaford, is Exhibit No. 31 an accurate  
10 depiction of a letter you sent to Mr. Reeb dealing with the  
11 feasibility of heavier reliance on Folsom Reservoir?

12 MR. HANNAFORD: Yes.

13 MR. SOMACH: Mr. Alcott, is Exhibit No. 36 an  
14 accurate statement at least at this time of what El Dorado  
15 Irrigation District expects to be the timetable for  
16 completion of the White Rock project EIR?

17 MR. ALCOTT: Yes, it is.

18 MR. SOMACH: And is Exhibit No. 37 an accurate  
19 depiction of the El Dorado Irrigation District urban water  
20 management plan?

21 MR. ALCOTT: Yes, it is.

22 MR. SOMACH: It is a copy --

23 MR. ALCOTT: It is a copy adopted by the board, yes.

24 MR. SOMACH: Mr. Reeb, is Exhibit No. 38 an accurate  
25 projection of El Dorado County's water demands for El  
26 Dorado Irrigation District service area?

27 MR. REEB: Yes.

28 MR. SOMACH: Mr. Alcott, is Exhibit No. 42 a table  
29 which depicts the El Dorado Irrigation District total  
30 annual actual system water demand and consumption?

31 MR. ALCOTT: Yes, that was the 1992 version.

32 MR. SOMACH: And, Mr. Reeb, are Exhibits 43 and 44  
33 correct maps with respect to El Dorado County Water Agency  
34 and El Dorado Irrigation District general facility maps --  
35 that is 43?

36 MR. REEB: Yes.

37 MR. SOMACH: And is 44 place of consumption use maps  
38 for El Dorado County Water Agency and El Dorado Irrigation  
39 District?

40 MR. REEB: Yes.

41 MR. SOMACH: Exhibit No. 49, is that a water  
42 resources project development, and is that a listing or  
43 table of water resources projects developed and proposed?

44 MR. REEB: Yes, it is.

1 MR. SOMACH: And Exhibit No. 50, is that a general  
2 location map?

3 MR. REEB: Yes.

4 MR. SOMACH: Mr. Reeb, Exhibit Nos. 51 and 52 come  
5 from the final EIR as does 53? I just want to make sure we  
6 have them outlined here. Exhibit 51 is the location map;  
7 is that correct?

8 MR. REEB: Yes.

9 MR. SOMACH: And 52 is a program area map?

10 MR. REEB: Yes.

11 MR. SOMACH: And finally, Exhibit No. 53, an EID  
12 service area and proposed place of consumptive map?

13 MR. REEB: Yes.

14 MR. SOMACH: Okay, I have nothing further for this  
15 panel, Mr. Stubchaer.

16 MR. STUBCHAER: All right. In regard to how we  
17 proceed, we are going to take a break either now or in  
18 about 15 or 20 minutes. Would you prefer to have it now  
19 and not interrupt your panel?

20 MR. SOMACH: I think that would be good.

21 MR. LAVENDA: Mr. Bowman, regarding Exhibit No. 45,  
22 in your pre-testimony, I believe it was identified as the  
23 basis for some of your assumptions. Did I miss it or did  
24 you not address it in your presentation?

25 MR. SOMACH: Actually, he started out by indicating  
26 that that was one of the exhibits he was relying on.  
27 That's the El Dorado County western slope water demand.

28 MR. BOWMAN: Right.

29 MR. LAVENDA: Does that exhibit accurately reflect  
30 the numbers used in your presentation?

31 MR. BOWMAN: Yes, it does.

32 MR. STUBCHAER: We will take a recess and come back  
33 at ten minutes to three.

34 (Recess)

35 MR. STUBCHAER: We will come back to order.

36 MR. SOMACH: Mr. Stubchaer, I would like to proceed  
37 similar to how I proceeded with the last panel, and that is  
38 to qualify them in terms of their testimony and  
39 qualifications, and then proceed just simply to allow them  
40 to testify on the subject of their testimony.

41 I am going to start with Jeffrey F. Kozlowski. Mr.  
42 Kozlowski, would you state your name and spell it, and  
43 provide your job title.

1 MR. KOZLOWSKI: My name is Jeffrey Kozlowski. I am  
2 a fisheries biologist with Jones & Stokes Associates. The  
3 spelling of my last name is K-o-z-l-o-w-s-k-i.

4 MR. SOMACH: And is Exhibit No. 6 an updated and  
5 accurate description of your background and experience?

6 MR. KOZLOWSKI: That is correct.

7 MR. SOMACH: And is Exhibit No. 23 an accurate  
8 statement of the testimony that you are going to give  
9 today?

10 MR. KOZLOWSKI: That's correct.

11 MR. SOMACH: And that was prepared by you along with  
12 Mr. Dunn and Mr. Shaul?

13 MR. KOZLOWSKI: That's correct.

14 MR. SOMACH: Mr. Shaul, you are going to be on the  
15 cross-examination panel, so I want to make sure that we  
16 have qualified you in terms of these exhibits.

17 Can you state your name and also spell it, and  
18 provide your job title?

19 MR. SHAUL: My name is Warren Shaul, S-h-a-u-l, and  
20 I am a fisheries biologist with Jones & Stokes Associates.

21 MR. SOMACH: And is Exhibit No. 7 an accurate and  
22 updated description of your background qualifications and  
23 experience?

24 MR. SHAUL: Yes, it is.

25 MR. SOMACH: And did you assist in the preparation  
26 of Exhibit No. 23, which is a statement of testimony?

27 MR. SHAUL: Yes, I did.

28 MR. SOMACH: The next witness that we will call is  
29 Mr. Gus Yates.

30 Mr. Yates, would you spell your name for the record  
31 and give us your job title.

32 MR. YATES: Y-a-t-e-s. I am a hydrologist with  
33 Jones & Stokes Associates.

34 MR. SOMACH: And is Exhibit No. 8 an updated and  
35 accurate description of your qualifications and experience?

36 MR. YATES: Yes, it is.

37 MR. SOMACH: And is Exhibit No. 24 your statement of  
38 testimony?

39 MR. YATES: Yes, it is.

40 MR. SOMACH: The next witness that I want to call is  
41 Lisa Larrabee. Ms. Larrabee, could you spell your name for  
42 the record and describe your job title?

43 MS. LARRABEE: My name is Lisa Larrabee, L-a-r-r-a-  
44 b-e-e. I am a senior environmental planner at Jones &

1 Stokes Associates, and Environmental Project Manager for  
2 the Environmental Impact Report.

3 MR. SOMACH: And, Ms. Larrabee, is Exhibit No. 9 an  
4 accurate updated description of your qualifications,  
5 background and experience?

6 MS. LARRABEE: Yes, it is.

7 MR. SOMACH: And is Exhibit No. 25 your testimony?

8 MS. LARRABEE: Yes, it is.

9 MR. SOMACH: The next witness is Margaret Townsley.  
10 Ms. Townsley, will your spell your name and describe your  
11 job title?

12 MS. TOWNSLEY: My name is Margaret Townsley, T-o-w-  
13 n-s-l-e-y, and I am a geologist at Jones & Stokes  
14 Associates.

15 MR. SOMACH: And, Ms. Townsley, is Exhibit No. 12 an  
16 updated and accurate description of your background  
17 qualifications and experience?

18 MS. TOWNSLEY: Yes, it is.

19 MR. SOMACH: And is Exhibit No. 26 your written  
20 statement?

21 MS. TOWNSLEY: Yes, it is.

22 MR. SOMACH: The last person I would like to call is  
23 Mr. Edward Whisler. Could you spell your name and correct  
24 me if I mispronounced your name.

25 MR. WHISLER: My name is Edward Whisler, W-h-i-s-l-  
26 e-r.

27 MR. SOMACH: And your job title?

28 MR. WHISLER: Wildlife biologist with Jones &  
29 Stokes.

30 MR. SOMACH: And is Exhibit No. 16 an updated and  
31 accurate description of your background qualifications and  
32 experience?

33 MR. WHISLER: Yes, it is.

34 MR. SOMACH: And is Exhibit No. 28 your statement of  
35 testimony?

36 MR. WHISLER: Yes.

37 MR. SOMACH: Now, you also assisted in the  
38 preparation of the testimony which is described as Exhibit  
39 No. 27; is that correct?

40 MR. WHISLER: Yes.

41 MR. SOMACH: You were involved in its preparation?

42 MR. WHISLER: Yes.

43 MR. SOMACH: And you will be presenting the  
44 information with respect to Exhibit No. 27 instead of Mr.  
45 Messick; is that correct?

1 MR. WHISLER: Yes.

2 MR. SOMACH: I would like to then with that  
3 introduction of exhibits ask the first witness, Ms.  
4 Larrabee, to begin her testimony.

5 LISA LARRABEE

6 having been sworn, testified as follows:

7 MS. LARRABEE: I would like to make a few  
8 introductory remarks about the Environmental Impact Report.  
9 The Environmental Impact Report serves two primary  
10 purposes.

11 First, it serves as a program EIR for various alternative  
12 designed to meet projected water demands and distribution  
13 needs. Second, it servers as a project EIR for the El  
14 Dorado project, the subject of these hearings.

15 CEQA guidelines Section 15168 and statute 21903  
16 encouraged lead agencies to prepare program EIRs on series  
17 of related actions for four major reasons:

18 One, it's to insure that lead agencies consider  
19 cumulative impacts of related actions.

20 Number two, it's to avoid duplicative policy  
21 considerations at the project level.

22 Number three, it's to allow lead agencies to  
23 consider broad policy alternatives and prepare program-wide  
24 mitigation at an early time in the planning process.

25 And lastly, it is reduce paperwork.

26 The EIR analysis was conducted at the program level  
27 for the small Alder project, Texas Hill Reservoir project,  
28 the Folsom Reservoir project, and the White Rock project.

29 The construction impact of White Rock project, which  
30 is a distribution and water treatment project that extends  
31 from the SMUD White Rock penstock to distribution  
32 facilities in the western service area, are currently being  
33 evaluated in a project level EIR.

34 Exhibit 36 contains the schedule for the White Rock  
35 project EIR. The El Dorado project was evaluated at a  
36 project level in this EIR.

37 The result of the environmental analysis will be  
38 presented in the following oral testimony.

39 MR. SOMACH: Ms. Larrabee will be testifying speci-  
40 fically on some substantive areas later.

41 I would like to, first, as Mr. Yates to testify on  
42 the hydrology that was incorporated within the  
43 environmental EIR and associated with impacts.

44 GUS YATES,

45 having been sworn, testified as follows:

1 MR. YATES: My name is Gus Yates. I have been a  
2 hydrologist with Jones & Stokes Associates, and before that  
3 with the U. S. Geological Survey since 1983.

4 My written testimony is shown in Exhibit 24 and  
5 deals with water quality. I also prepared the analysis of  
6 hydrologic impacts of the El Dorado project for the final  
7 and draft EIRs, which are Exhibits 29 and 30. My oral  
8 testimony will cover by hydrologic impacts and water  
9 quality impacts.

10 I will begin my discussion with the upper watershed  
11 area of the South Fork American River and work downstream  
12 to the Delta.

13 The upper watershed area, for the purpose of this  
14 discussion, includes all lakes and waterways downstream to  
15 the El Dorado Canal intake near Kyburz. The El Dorado  
16 project would not alter PG&E's operation of its facilities  
17 in the upper watershed, and the storage and release regimes  
18 for Lake Aloha, Caples Lake and Silver Lake would remain  
19 unchanged.

20 I realize there are a number of groups and  
21 individuals who care very deeply about the future of those  
22 lakes and who remain skeptical about this conclusion, so I  
23 would like to explain it.

24 PG&E is allowed a certain amount of flexibility in  
25 its operation of the lakes under the terms of its FERC  
26 permit. Releases are not the same every year, but this  
27 variability was included in the operations simulations  
28 described earlier by Jack Hannaford. Even at the 2020  
29 demand level and even with the year-to-year variability in  
30 PG&E's release patterns, El Dorado was able to redivert the  
31 PG&E water on a timely basis.

32 There was no need to reoperate the upper watershed  
33 lakes in any of the 71 years of simulation. How is this  
34 possible? It is possible because of the similarity of  
35 demand scheduled and the availability of downstream  
36 storage.

37 The seasonal demand pattern for hydroelectric power  
38 generation is similar to the seasonal demand pattern for  
39 municipal and agricultural use in the El Dorado service  
40 area. Water is needed most in summer and fall.

41 Thus, PG&E's existing lake operation is well suited  
42 to supplying El Dorado on a timely basis.

43 There were a few months during the 71-year  
44 simulation period when the amount of available PG&E water  
45 was less than El Dorado's water demand for that month.

1 However, these minor mismatches can be accommodated by  
2 shifting some of the summer rediversions for the El Dorado  
3 project to spring or fall and using Sly Park Reservoir or  
4 Folsom Reservoir to provide interim storage.

5 These shifted rediversions would still draw only --

6 MR. VOLKER: May I be heard?

7 MR. STUBCHAER: Yes.

8 MR. VOLKER: We have the same objection, Mr.  
9 Stubchaer. With all due respect to the witness, I am  
10 unable to follow his testimony that was filed on May 18.  
11 It doesn't seem to match up with what I am hearing, and we  
12 have put up with a lot of variation on the themes  
13 preliminary presented, and I understand there is going to  
14 be some updating, but we seem to be at wide variance with  
15 the testimony originally presented.

16 I suggest if we are going to continue to depart  
17 substantially, that all parties be given an opportunity to  
18 review the written testimony that is now being presented so  
19 we can prepare cross-examination.

20 MR. STUBCHAER: I believe I heard him say when he  
21 began he is reviewing information that is in the EIR as  
22 well as in this written submittals, and I have a question  
23 of our counsel; is it permissible to summarize what is in  
24 the EIR or should the oral summary be limited to the  
25 evidence submitted for this hearing, or does that include  
26 the EIR?

27 MS. KATZ: All the parties have been on notice about  
28 the specific testimony which is Exhibit 24, and it does not  
29 reference the EIR or the part of the EIR.

30 If Mr. Yates could be specific as far as what parts  
31 of the EIR he is talking about and give persons an  
32 opportunity to piece all of this together -- it's been a  
33 little difficult for staff as well as other parties trying  
34 to follow what he is talking about and who is knowledgeable  
35 about what issue.

36 MR. SOMACH: Actually, I don't understand that  
37 comment. I think that, you know, it's difficult. We have  
38 prepared a very extensive Environmental Impact Report and  
39 then under the State Board's rulings, we are supposed to  
40 come up with written testimony, and one of the things that  
41 a witness or that a proponent of a project can do is merely  
42 just simply staple together the chapters of the  
43 Environmental Impact Report and just simply say, this is  
44 our testimony.

1 I don't understand that to be in keeping with the  
2 Board's rules. My understanding was that we ought to, in  
3 our written testimony submitted to the Board, paraphrase  
4 what is in the EIR and then attempt to further summarize in  
5 terms of our oral testimony. That's what we have attempted  
6 to do.

7 Mr. Yates, basically, relied upon Mr. Hannaford's  
8 hydrology. However, in terms of the written portions of  
9 the Environmental Impact Report with respect to hydrology,  
10 Mr. Yates was the consultant that worked with the biologist  
11 in terms of synthesizing the Hannaford hydrology into a  
12 form talking about the reaches which are going to be talked  
13 about here by the biologists.

14 As far as I am concerned, in all candor, Mr. Yates'  
15 testimony is not essential. It is helpful in terms of  
16 understanding exactly how the biologists and the impact  
17 assessment was done based upon the hydrology that was  
18 presented to them.

19 It helps clarify. It does not add one iota of new  
20 evidence to this process. Moreover, all the evidence in  
21 terms of the hydrology studies were presented by Mr.  
22 Hannaford, who is here for cross-examination, and all the  
23 stuff that Mr. Yates is talking about comes right out of  
24 the EIR with respect to hydrology, since that's what he is  
25 talking about.

26 MR. STUBCHAER: The question I would have then, is  
27 cross-examination on the EIR permitted?

28 MR. SOMACH: It must be permitted to the extent it  
29 deals with impacts associated with this project.

30 MR. STUBCHAER: Staff.

31 MS. KATZ: That is a nice smooth summary, Mr.  
32 Somach, but the problem is in trying to prepare for the  
33 hearing, from all of the parties as well as the staff, and  
34 you raise issues like this for other parties, I'm sure --  
35 we're trying to figure out and to prepare in advance what  
36 the issues are and who is saying what about what, and based  
37 on what, and we have got Exhibit 24 which is a little over  
38 a page, and what I have been hearing doesn't track with  
39 Exhibit 24.

40 I agree with Mr. Volker on that, and now we are  
41 being asked to refer to the EIR and are talking about  
42 something else.

43 Yes, the EIR is an exhibit that everyone has had,  
44 but it helps, as the Board's instructions have indicated,

1 to prepare complete written testimony in its entirety and  
2 then summarize it.

3 And so, we are focusing on different subjects with  
4 different witnesses that we haven't had a chance to think  
5 about ahead of time.

6 MR. SOMACH: So, what you are telling me is when I  
7 prepare for the next Board hearing I am to take the word  
8 processor portions of the EIR, say, for example, on  
9 hydrology and I am just supposed to turn those around and  
10 vomit them out as testimony statements?

11 MS. KATZ: No. It would help to have a statement.  
12 This is titled *Water Quality* and there's not a reference in  
13 here to the EIR or to hydrology. What we are asking, I  
14 think, is a pretty common-sense approach, which is if you  
15 are going to make reference to other exhibits so state, and  
16 then we can say, okay, we are going to be talking about the  
17 EIR on page whatever.

18 MR. SOMACH: The statement on the bottom of that  
19 page isn't sufficient for that purpose?

20 MS. KATZ: On the bottom of what page?

21 MR. SOMACH: Of the testimony.

22 MR. VOLKER: If I may respond, Mr. Chairman, the  
23 long and the short of it is that there is a rule that  
24 requires witnesses to present their testimony well in  
25 advance of the hearing. The purpose of the rule is a  
26 simple one, so all the parties can become familiar with  
27 their position and prepare to cross-examine. That rule has  
28 not been followed here.

29 I have suggested a means by which the parties could  
30 be apprised of the testimony. Apparently, it is already  
31 written. If copies could be circulated to all present, then  
32 we would have an opportunity to cross-examine. Otherwise,  
33 I would move to strike the testimony.

34 MR. STUBCHAER: I think that's a reasonable request.

35 MR. SOMACH: For the record, I want to just make  
36 sure it is clear, there is nothing of a surprise nature  
37 here. All of this information has been submitted. It's  
38 all been analyzed. There is nothing new in any of what's  
39 being presented. I just want to make sure the record is  
40 clear on that point.

41 MR. VOLKER: The record speaks for itself.

42 MR. STUBCHAER: I would ask that the oral summaries  
43 be limited to the written submittals and we will make  
44 copies of what has been said so far for distribution to all  
45 parties.

1 MR. VOLKER: Thank you.

2 MR. SOMACH: Mr. Yates, proceed.

3 MR. VOLKER: Just for clarification purposes, can we  
4 have those summaries well before cross-examination is  
5 expected to commence, i.e., either we defer cross-  
6 examination until tomorrow or we have the summaries now.

7 MR. SOMACH: As soon as he is done, or if you would  
8 like to break now, it doesn't matter to me.

9 MR. STUBCHAER: Well, it seems to me we can ask  
10 somebody to have the copies made while we are proceeding  
11 with the presentation and I suppose we could divide the  
12 cross-examination and cross-examine on what you have, and  
13 come back at the end and give you more time to study this.

14 MR. VOLKER: Okay, thank you.

15 MR. JACKSON: I have one other question representing  
16 Friends of the River. Just to be clear, there was another  
17 deviation from testimony this morning. What I would like  
18 to have clear for the record is, since I have prepared my  
19 cross-examination on the one that wasn't testified to, is  
20 it okay to still cross-examine on what is in the record?

21 MR. STUBCHAER: Yes, of course.

22 MR. SOMACH: What deviation?

23 MR. JACKSON: You talked about all of the stuff from  
24 the stream being fully appropriated from the testimony that  
25 Mr. Reeb turned in.

26 MR. SOMACH: He doesn't have to recite everything  
27 verbatim.

28 MR. JACKSON: Oh, I'm sorry, I thought you asked me  
29 what had been taken out.

30 MR. SOMACH: We didn't take anything out. It is  
31 still his testimony.

32 MR. STUBCHAER: You have some testimony by parties  
33 who aren't going to summarize.

34 MR. SOMACH: We will start reading the whole EIR for  
35 everybody if that's what you want.

36 MR. STUBCHAER: No, no.

37 MR. SOMACH: I am going to make this much simpler  
38 because there is really nothing new here. I am simply  
39 going to drop any additional testimony with respect to Mr.  
40 Yates. As I said, it merely went, I thought, to provide  
41 you all with a better understanding of the hydrology, but  
42 we have already got hydrology information in the record.  
43 Mr. Hannaford has already testified, so Mr. Yates will be  
44 here for cross-examination, if necessary, and we can just

1 simply expedite it and not worry about making copies and  
2 not unduly burden the parties and the staff.

3 MR. STUBCHAER: It's already been said.

4 MR. VOLKER: It's too late or it will have to be  
5 stricken.

6 MR. STUBCHAER: The hydrology testimony is already  
7 in the record.

8 MR. SOMACH: Well, I have no objection to the motion  
9 to strike that if Mr. Volker wants to continue the motion.

10 MR. STUBCHAER: Are you opposed to making the  
11 copies?

12 MR. SOMACH: I just want to be told what I am  
13 supposed to do.

14 MR. STUBCHAER: You can continue with his testimony  
15 and the copies will be distributed as agreed to a few  
16 minutes ago.

17 MR. SOMACH: What leeway is going to be given to  
18 other parties with respect to cross-examination? I don't  
19 want everybody to have to trip up here a second time for 20  
20 more minutes each of cross-examination.

21 MR. STUBCHAER: The second goal would be limited to  
22 the cross-examination of Mr. Yates' written statement that  
23 is different than what is in the written submittals, and  
24 would only have a second chance if that cross-examination  
25 finishes today and you would have to come back tomorrow.

26 MR. SOMACH: Okay, all right. Then, I guess Mr.  
27 Yates, go ahead.

28 MR. YATES: I will continue. I was describing how  
29 it was possible to operate the El Dorado project without  
30 affecting the upper watershed lakes, and first, describe  
31 the similarity of demand schedule.

32 I also want to point out that the need for  
33 downstream storage is not a problem because the largest  
34 cumulative shortage during the simulation equaled only 13  
35 percent of the storage capacity of Sly Park Reservoir.  
36 This would certainly be vacant in dry years when the  
37 shortages would occur.

38 The next reach of the South Fork American River,  
39 which I will refer to as the Kyburz reach, extends from the  
40 El Dorado Canal intake near Kyburz to the El Dorado  
41 powerhouse near the upper end of Slab Creek Reservoir.  
42 This reach would also be unaffected by the El Dorado  
43 project because diversions into the El Dorado Canal would  
44 remain unchanged.

1           Again, Mr. Hannaford's simulations demonstrated that  
2 the existing availability of water in the El Dorado Canal  
3 is adequate to meet El Dorado's demand schedule. There  
4 would be no need to change the amount of water diverted  
5 into the canal, so flows in the Kyburz reach would remain  
6 unchanged.

7           From El Dorado powerhouse to Chili Bar Dam, water  
8 flows almost entirely in artificial waterways, Slab Creek  
9 Reservoir, the White Rock tunnel and powerhouse, and Chili  
10 Bar Reservoir. There would be no significant environmental  
11 impacts associated with the changes in flows that would  
12 occur in these waterways.

13           The lowermost reach of the South Fork American  
14 River, which I call the Lotus reach, extends from Chili Bar  
15 Dam to Folsom Reservoir, and here finally we see some flow  
16 changes that would result from the El Dorado project.

17           I evaluated flow changes in this reach using a  
18 spreadsheet model that subtracted El Dorado's diversions  
19 from existing flows. Even at the full 2020 demand level,  
20 the El Dorado --

21           MR. STUBCHAER: Is that model in the record?

22           MR. YATES: It's described in the EIR, yes.

23           Even at the full 2020 demand level, the El Dorado  
24 project would decrease the annual discharge by at most only  
25 two percent in an average year and by only five percent in  
26 an extremely dry year like 1977.

27           On a monthly basis, proportional flow changes would  
28 be larger in some months and smaller in others. The  
29 largest change would occur in July, but even in July, the  
30 El Dorado project would decrease monthly discharge by only  
31 six percent in an average year and eleven percent in a year  
32 like 1977.

33           I should point out that these are worst-case figures  
34 that assume all of the El Dorado project water is diverted  
35 above the Lotus reach and none is diverted at Folsom  
36 Reservoir.

37           These annual and monthly figures do not reveal the  
38 full nature and impact on flows in the Lotus reach because  
39 the flow regime, at least in summer, is dominated by daily  
40 hydropower releases from Chili Bar Dam.

41           I would like to draw your attention to this figure,  
42 which is Figure 4-10 in the draft EIR. This figure shows a  
43 hydrograph of flow fluctuations during a ten-day period in  
44 July, 1991. Note that the Y axis scale is logarithmic, so

1 the variation in flow is actually more dramatic than it  
2 appears on the graph.

3 During the period between hydropower releases, flow  
4 is typically about 200 cubic feet per second.

5 MR. STUBCHAER: You said that was a figure from the  
6 EIR. Did you say which figure?

7 MR. YATES: Figure 4-10 in the draft EIR. That's  
8 Exhibit 30, I believe.

9 Peak flows during the hydropower pulses are  
10 typically between 1,000 and 2,000 cfs, so there's a five to  
11 tenfold variation in flow every day in this reach.

12 If more or less water is available, PG&E changes the  
13 duration of the hydropower pulse rather than the magnitude  
14 of the peak flow or low flow. In this graph, which shows a  
15 dry year, the pulses are typically about four to eight  
16 hours in duration. In a normal year or earlier in the  
17 season, the durations are typically longer.

18 The effect of the El Dorado project would be to  
19 decrease the duration of the daily hydropower pulse. The  
20 maximum decrease would be about 40 minutes and would occur  
21 in July. The minimum and peak flows would remain  
22 unchanged.

23 Water quality in the Lotus reach is good and  
24 supports put-and-take trout fishery. The El Dorado project  
25 would not substantially alter water quality in the reach.

26 This brings us to Folsom Reservoir. The annual and  
27 monthly decreases in inflow to Folsom Reservoir would be  
28 the same as the decreases I just described for the Lotus  
29 reach, except that they would be a smaller percentage of  
30 the total inflow to the reservoir.

31 The annual diversion of 17,000 acre-feet for the El  
32 Dorado project would equal only 0.7 percent of the average  
33 annual inflow and only 1.7 percent of the reservoir  
34 capacity.

35 Even on a monthly basis, the largest percentage  
36 decrease in inflow, which would occur in July of a year  
37 like 1977, would still be only about 5 percent of inflow.

38 These changes are too small to significantly alter  
39 water levels or temperatures in Folsom Reservoir. They are  
40 also too small to require systematic reoperation of the  
41 reservoir.

42 Folsom Reservoir is large enough to completely  
43 reregulate the changes in inflows so that the change in the  
44 monthly pattern of outflows might be very different from  
45 the change in the pattern of inflows.

1           It is important to recognize the El Dorado cannot  
2 control these changes in outflows because Folsom Reservoir  
3 is operated by the U. S. Bureau of Reclamation. Although  
4 one can speculate about the changes in outflows, they  
5 cannot be accurately predicted for two reasons:

6           One, the changes in flows resulting from the El  
7 Dorado project are smaller than the level of accuracy of  
8 models that simulate CVP operations. Folsom Reservoir is  
9 operated conjunctively with other CVP reservoirs such as  
10 Shasta and Clair Engle. The El Dorado project represents a  
11 tiny perturbation in this large system.

12           In reality, the system is not operated as precisely  
13 or predictably as would be suggested by the idealized  
14 operating rules in models such as PROSIM and DWRSIM would  
15 suggest. It is questionable whether flow changes predicted  
16 by these models would be accurate or meaningful in any real  
17 sense for a project as small as the El Dorado project.

18           Two, the entire operating strategy for Folsom  
19 Reservoir is in a tremendous state of flux because of other  
20 much larger factors unrelated to the El Dorado project.  
21 These factors include possible reoperation of Folsom  
22 Reservoir for flood control, the CVP Reform Act, the  
23 listing of winter-run chinook salmon, the Bay-Delta  
24 hearings, and possible revision of Decision 893 regarding  
25 flows in the lower American River.

26           The effects of the El Dorado project would be  
27 dwarfed by the potential effects of any one of these  
28 factors, yet the final outcome of these factors is itself  
29 uncertain.

30           So, it is very difficult to accurately predict what  
31 is going to happen in the lower American River from such a  
32 small change as the El Dorado project.

33           What I can say with confidence is that the average  
34 annual discharge in the lower American River, lower  
35 Sacramento River and Delta would decrease by 17,000 acre-  
36 feet per year. This equals only 0.7 percent of average  
37 annual flow in the lower American River and 0.2 percent of  
38 average annual inflow to the Delta.

39           The direct impacts of these changes on water quality  
40 would be very small, quite possibly too small to even  
41 measure accurately.

42           This concludes my testimony.

43           MR. SOMACH: If we could, I guess I have got the  
44 testimony available to be copied, and then we can get it  
45 distributed quickly so that perhaps we can conclude --

1 MR. STUBCHAER: Mr. Somach, it looks to me like  
2 cross-examination is going to go over until tomorrow  
3 anyway.

4 MR. SOMACH: The next witness is Margaret Townsley.

5 MARGARET TOWNSLEY,

6 having been sworn, testified as follows:

7 MS. TOWNSLEY: I am Margaret Townsley. I am an  
8 environmental geologist with Jones & Stokes Associates, and  
9 I prepared the geology analysis in the EIR.

10 My qualifications, as Mr. Somach referenced earlier,  
11 are presented in Exhibit 12 and my written testimony is  
12 provided in Exhibit 26.

13 I will also reference Exhibits 29 and 30, the draft  
14 and final EIRs.

15 The El Dorado project does not involve any new dams  
16 or reservoirs and points of rediversion do not involve any  
17 new construction. Therefore, I concluded that no geology  
18 or soil impacts related to construction would occur.

19 In addition, flow changes as described in the  
20 testimony of Mr. Hannaford or Mr. Yates would be so minor  
21 that they would not increase soil erosion.

22 In summary, the El Dorado project would not result  
23 in any geologic or soil impacts, and that concludes my  
24 testimony.

25 MR. STUBCHAER: You set a record.

26 MR. SOMACH: I don't think it went outside the  
27 scope.

28 Next is Mr. Kozlowski.

29 JEFFREY F. KOZLOWSKI,

30 having been sworn, testified as follows:

31 MR. KOZLOWSKI: My name is Jeffrey Kozlowski, and  
32 I'm a fisheries biologist with Jones & Stokes Associates.

33 My statement of qualifications is presented as  
34 Exhibit 6 and my written testimony is presented as Exhibit  
35 23.

36 Mr. Warren Shaul, also with Jones & Stokes  
37 Associates, assisted me in the preparation of this written  
38 testimony and is also available to answer any questions.

39 My testimony covers potential direct and cumulative  
40 effects of the El Dorado project on fishery resources. In  
41 consideration of the work of Mr. Yates and other team  
42 members, we have concluded that the El Dorado project would  
43 not affect the upper watershed of the American River,  
44 including the Kyburz reach which extends from the El Dorado  
45 diversion dam downstream to the El Dorado powerhouse, nor

1 would it affect Caples, Silver and Medley Lakes.  
2 Therefore, no impacts on fisheries would occur in these  
3 waters.

4 Whether or not the El Dorado project would have an  
5 effect on fishery resources in the Lotus reach depends upon  
6 whether water is diverted at Folsom Reservoir or at one of  
7 the upstream rediversion points, those being the Hazel  
8 Creek tunnel, the El Dorado Forebay, and White Rock.

9 If water is diverted from one of these upstream  
10 rediversion points, impacts on fishery resources in the Lot  
11 us reach would be less than significant because project  
12 diversions would not affect the existing magnitude of the  
13 fluctuating flow pattern and because reduction in total  
14 streamflow would be small.

15 If water is diverted at Folsom Reservoir, fishery  
16 resources in the Lotus reach would be unaffected by the  
17 project operation because flows would remain unchanged.

18 Folsom Reservoir fisheries would not be signifi-  
19 cantly affected because the annual diversion amount would  
20 be small compared to reservoir inflows and would have  
21 minimum effect on reservoir filling and drawdown rates and  
22 reservoir surface area.

23 The El Dorado project would not significantly affect  
24 the lower American River, lower Sacramento River and Delta  
25 fisheries because the associated reduction in streamflows  
26 and daily outflow would be minor.

27 We assessed potential cumulative impacts on fishery  
28 resources in the Lotus reach resulting from reasonably  
29 foreseeable and probable projects. We concluded that the  
30 cumulative effect would be less than significant because  
31 project diversions would not affect the magnitude of the  
32 fluctuating flow pattern and because the reduction in total  
33 streamflow would be small.

34 We also assessed potential cumulative impacts on  
35 Folsom Reservoir fisheries and determined that impacts  
36 would be less than significant because the annual diversion  
37 amount would be small compared to reservoir inflow and  
38 would have minimal effect on reservoir filling, drawdown  
39 rate and reservoir surface area.

40 The incremental effect of the El Dorado project on  
41 Delta inflow would not be beneficial but would contribute  
42 to future and ongoing cumulative effects. These effects  
43 are extremely minor, however, in the context of the ongoing  
44 Central Valley Project Improvement Act requirements and  
45 endangered species Act requirements, and potentially

1 revised State Water Resources Control Board Delta  
2 standards.

3 Implementation of the El Dorado project would have  
4 to be consistent with existing and future State Water  
5 Resources Control Board standards and criteria designed to  
6 protect, maintain and enhance fishery resources.

7 This concludes my testimony. Thank you.

8 MR. SOMACH: The next witness is Mr. Whisler.

9 EDWARD WHISLER,

10 having been sworn, testified as follows:

11 MR. WHISLER: My name is Edward Whisler. I am a  
12 wildlife biologist with Jones & Stokes Associates. I  
13 prepared the wildlife analysis and assisted in the  
14 vegetation analysis of the EIR.

15 My qualifications are presented in Exhibit 16 and my  
16 testimony is presented in Exhibit 28. I am also adopting  
17 testimony presented in Exhibit 27.

18 The El Dorado project does not involve any new dam  
19 or reservoir construction and the points of rediversion do  
20 not involve any new construction. Therefore, no construc-  
21 tion related impacts on vegetation and wildlife would  
22 occur.

23 Flow changes as described in the testimony presented  
24 by Jack Hannaford and Gus Yates would be minor. The El  
25 Dorado project would reduce summer and hydropower releases  
26 in the Lotus reach, but neither the staged summer release  
27 nor the volume of winter flows would be noticeable changed.

28 Therefore, the El Dorado project would not directly  
29 affect vegetation and wildlife on the South Fork American  
30 River.

31 Changes in Folsom Reservoir levels and flows below  
32 Folsom would be so minor as not to affect vegetation or  
33 wildlife in these reaches.

34 The cumulative effect of the El Dorado project,  
35 other projects in the South Fork and Folsom reoperation  
36 could affect wetland habitat below Folsom Reservoir.  
37 Mitigation monitoring enhancement is recommended to reduce  
38 this cumulative impact.

39 This concludes my testimony.

40 MR. SOMACH: And the final witness in this panel is  
41 Ms. Larrabee.

42 LISA LARRABEE,

43 having been previously sworn, testified further as follows:

1 MS. LARRABEE: I will be summarizing the  
2 Environmental Impact Report analyses for growth, recreation  
3 and aesthetics.

4 CEQA requires the Environmental Impact Report to  
5 consider growth-inducing effects. Our approach in the EIR  
6 to evaluate the growth was based on identifying the  
7 existing land uses, reviewing population projections as  
8 described by Robert Bowman and presented in Exhibit 22,  
9 reviewing the draft general plan update and conceptual land  
10 use plan.

11 We identified five main categories of impacts  
12 including the conversion of open space and agricultural  
13 land to urban land uses, the conversion of biological  
14 communities to urban land uses, decreases water quality  
15 from urban runoff, increased traffic, decreased air  
16 quality, and increased noise levels, and finally, an  
17 increased demand for public services.

18 The County recognizes these impacts and has adopted  
19 policies aimed at protecting resources and insuring orderly  
20 growth in El Dorado County. The Environmental Impact  
21 Report also identified additional mitigation measures for  
22 recreation. We examined the water-pendent recreation  
23 resources of the South Fork American River, Folsom  
24 Reservoir, lower American River and Sacramento River and  
25 Delta.

26 Based on the hydrologic evaluation presented in the  
27 EIR and by Gus Yates and Jack Hannaford, it was determined  
28 that the primary effect would be on the Lotus reach below  
29 Chili Bar Dam which is a popular rafting location on the  
30 South Fork American River.

31 Based on our worst case analyses, the maximum impact  
32 to hydropower releases would be a reduction of about 40  
33 minutes of peak power pulses through Chili Bar. The EIR  
34 concluded this would be a significant impact to boating  
35 quality. Mitigation has been adopted by the Agency and El  
36 Dorado Irrigation District that would require the diversion  
37 schedule not to infringe on SMUD's and PG&E's ability to  
38 meet the release schedule these entities have agreed to  
39 with rafting organizations.

40 The incremental impact of Folsom Reservoir and below  
41 Folsom would not affect recreation at these locations  
42 because flow changes and reservoir level changes would be  
43 very minor.

44 For aesthetics, the El Dorado project does not  
45 involve any new dams or reservoirs, and the points of

1   rediversion do not require any new construction.  
2   Therefore, there would be no aesthetic impacts from new  
3   facilities.

4           Again, the flow changes would not be visibly  
5   perceptive in any reach of the South Fork American River,  
6   Folsom Reservoir, lower American River, lower Sacramento  
7   River or the Delta.

8           This concludes my testimony. Thank you.

9           MR. SOMACH: Ms. Larrabee, I have just a couple of  
10   questions associated with exhibits. Is Exhibit No. 60 the  
11   table from the final EIR which summarizes impacts and  
12   mitigation?

13           MS. LARRABEE: Yes, it is.

14           MR. SOMACH: And is Exhibit No. 61 a table from the  
15   final EIR which summarizes impacts of the El Dorado  
16   project?

17           MS. LARRABEE: Yes, it is.

18           MR. SOMACH: With that, that's our case in chief.  
19   I would like to, if I could, at least move to introduce the  
20   exhibits that we have used, and then, I guess to defer  
21   their acceptance until after cross-examination, or whatever  
22   the Board chooses to do in that regard.

23           MR. STUBCHAER: All right.

24           MS. KATZ: We can give exhibit numbers to the new  
25   versions of Mr. Reeb's testimony and Mr. Yates' testimony.

26           MR. SOMACH: If we could do that -- let's make Mr.  
27   Reeb's testimony Exhibit No. 67 and Mr. Yates' Exhibit No.  
28   68.

29           And then, I believe the conditions that I talked  
30   about earlier, and I would encourage any of the protestants  
31   that have questions about those proposed terms to feel free  
32   to ask anyone on the panel what they might mean, to do so.  
33   Those are 69, 70 and 71, I believe.

34           And I believe, if I can go through this just simply  
35   so our records are in order, we introduced the  
36   qualifications which are Exhibits 1 through 4, 6 through 9,  
37   12 and 16, and the other qualifications are on witnesses  
38   that will not be testifying here today; then statements of  
39   testimony, Exhibits 19 through 28, and I believe they have  
40   all been referred to.

41           And then, generally Exhibits 29 through 71 have all  
42   been referred to, either actually been referred to directly  
43   because I made a point of going through them, although some  
44   of them are described in more detail in the written  
45   testimony than what we did here verbally.

1 MR. LAVENDA: Could you repeat that again for the  
2 record.

3 MR. SOMACH: Starting with --

4 MR. LAVENDA: Repeat from 34 on, please.

5 MR. SOMACH: After 34 it would be actually 34  
6 through 71.

7 MR. LAVENDA: Okay, we are with you. I missed a  
8 couple, but we have got them.

9 MR. SOMACH: I don't usually do this, but somehow I  
10 got real conscious about looking at all the exhibits. I  
11 was pretty sure we got them all in.

12 With that, I guess Mr. Yates' testimony has been  
13 copied.

14 MR. STUBCHAER: What number was this?

15 MS. KATZ: No. 68.

16 MR. SOMACH: So, if everybody wants to write that  
17 down, Mr. Reeb's testimony was handed out, I think, this  
18 morning and I believe copies of those terms were put on the  
19 table for anybody that was interested in taking a look at  
20 them.

21 MR. VOLKER: Mr. Chairman, if I may be heard.

22 MR. STUBCHAER: Yes.

23 MR. VOLKER: I notice other witness were apparently  
24 reading from testimony which is not as dramatically as Mr.  
25 Yates' testimony, but did depart from the testimony that I  
26 had in my prehearing package. To the extent that that  
27 additional testimony could be reproduced for everybody's  
28 review, I think it would assist in our deliberations and  
29 cross-examination. I would make that request.

30 MR. STUBCHAER: Do you have any specifics on the  
31 deviations?

32 MR. VOLKER: I do.

33 MR. STUBCHAER: I didn't see anything about soil  
34 erosion on half a page.

35 MR. VOLKER: Well, as I recall, Mr. Hannaford, Mr.  
36 Alcott, there was another witness sandwiched in between  
37 those who testified with regard to facts and figures that I  
38 didn't find in my draft, and I am not going to object to  
39 that testimony because I think we all need some  
40 flexibility, but I would request to the extent it is  
41 reproduced and available that we circulate it to all  
42 parties overnight for cross-examination tomorrow.

43 Mr. Bowman was the other one.

44 MR. STUBCHAER: With regard to Mr. Hannaford's  
45 testimony, I followed most of that I thought in the written

1 submittals. It would go to a couple of exhibits to do it,  
2 but I thought it was all there.

3 Do you have specifics on his?

4 MR. VOLKER: Well, I am not prepared at this time to  
5 get into the specifics. I am just saying I was following  
6 it and there were some things that were stated that were  
7 not in the direct testimony.

8 MR. SOMACH: Actually, we have nothing to hide.  
9 We have provided testimony and exhibits and an EIR,  
10 summaries of testimony, verbal testimony, and they are all  
11 here for cross-examination.

12 But I have gone through a lot of testimony submitted  
13 by protestants that seem to me awfully cursory.

14 MR. STUBCHAER: I was wondering if we are setting a  
15 precedent that all parties are going to have to copy their  
16 oral statements, what they read from oral presentations and  
17 distribute them.

18 MR. VOLKER: I didn't raise objections in regard to  
19 minor deviations. Clearly, with regard to some of the  
20 witnesses there were significant deviations and I think as  
21 to those clearly we are entitled to have that testimony, or  
22 else it should be stricken.

23 As to the others, I am suggesting that only as a  
24 matter of convenience to the parties that to the extent we  
25 have in written form that which we were unable to quickly  
26 note as we were listening to the testimony, that it would  
27 be fruitful for purposes of cross-examination and  
28 understanding of their testimony.

29 MR. SOMACH: So long as the same is --

30 MR. STUBCHAER: It seems to me we need some sort of  
31 judgment as to whether or not they deviated substantially  
32 from the written material that was submitted to the record.  
33 If they didn't, I don't think the request is in order. To  
34 the extent it did deviate and I agree that a couple did  
35 deviate, it is in order, but I would hate to see the  
36 precedent that all oral statements that are written from  
37 prepared statements have to be distributed to all the  
38 parties, so if you could give me specifics, I will rule on  
39 the specific issues, but not just in general.

40 MR. VOLKER: I didn't take notes quickly enough with  
41 regard to Mr. Alcott and Mr. Bowman, so again, I am  
42 prejudiced because it did depart and it is impossible to  
43 prove it absent the transcript.

44 MR. STUBCHAER: You would limit it to those two  
45 then?

1 MR. VOLKER: Certainly.

2 MR. STUBCHAER: Mr. Somach, did Mr. Bowman and Mr.  
3 Alcott have --

4 MR. SOMACH: They were reading from something. I  
5 don't know whether they were just notes or were typed out.

6 MR. ALCOTT: I used a typed outline. I have copies  
7 if you would like them.

8 MR. SOMACH: I have two copies here and I will bring  
9 those up, and this is an original. It doesn't matter, but  
10 I just hope that this is afforded to the applicant to the  
11 extent that we're going to this length to accommodate all  
12 the parties.

13 MR. STUBCHAER: Yes, what is fair to one is fair  
14 for all.

15 MR. VOLKER: Certainly.

16 MR. SOMACH: We better identify those also. I  
17 suggest that we pick up with Mr. Alcott's notes as 72 and  
18 Mr. Bowman's as 73. They have already testified to it and  
19 I see no problem other than --

20 MR. STUBCHAER: Right.

21 MR. VOLKER: Thank you, Mr. Chairman.

22 MR. STUBCHAER: All right. We are going to move to  
23 cross-examination. I would like to get some indication of  
24 how many parties wish to cross-examine the applicant.  
25 Those who intend to cross-examine, please raise your hands.  
26 All right.

27 So I am going down the list here. PG&E, are you  
28 going to cross-examine? You don't have to stand in  
29 response to this.

30 MR. MOSS: Yes.

31 MR. STUBCHAER: Sacramento Municipal Utility  
32 District?

33 MR. O'BRIEN: Yes.

34 MR. STUBCHAER: Bureau of Reclamation?

35 MR. TURNER: Yes.

36 MR. STUBCHAER: Fish and Game?

37 MS. PETER: Yes.

38 MR. STUBCHAER: CSPA?

39 MR. JACKSON: Mr. Volker will take care of that for  
40 CSPA as well as the other clients.

41 MR. STUBCHAER: You are not going to cross-examine?

42 MR. JACKSON: No.

43 MR. STUBCHAER: Sierra Club?

44 MR. VOLKER: Yes.

45 MR. STUBCHAER: San Joaquin County? Amador County?

1 MR. GALLERY: Yes.

2 MR. STUBCHAER: Paul Creger.

3 MR. CREGER: Yes.

4 MR. STUBCHAER: Amador County Chamber of Commerce?  
5 Save the American River?

6 MR. SMITH: Yes.

7 MR. STUBCHAER: Friends of the River?

8 MR. JACKSON: Yes.

9 MR. STUBCHAER: El Dorado Forest?

10 So, there are ten parties that wish to cross-  
11 examine. If it is limited to 20 minutes, an average of 20  
12 minutes, that's 200 minutes. We are not going to make it  
13 all today. So, we will carry over until tomorrow.

14 So, we will begin the cross-examination of the  
15 materials that have been available to the parties so far,  
16 with PG&E Company.

17 MR. SOMACH: We will need to, if we could, pull our  
18 witnesses forward.

19 MR. STUBCHAER: The way this works is that only one  
20 party is allowed to ask questions, one representative per  
21 party, as explained in the Notice of Hearing, but any  
22 member of the panel who has the answer may respond. It is  
23 not just the person to whom the question might be directed,  
24 and if you can't all get around the mikes, you may have to  
25 play musical chairs. That's not unheard of here.

26 MR. SOMACH: This is directed to the panel since  
27 they are new to this, too. I just want to remind you,  
28 number one, you need a microphone to talk and don't worry  
29 that it's going to take some time to shuffle the  
30 microphones around. I want you to take the time and do it.

31 Number two, because the court reporter doesn't know  
32 who you all are, state your name, if you can, prior to the  
33 time that you respond to the question so that she knows who  
34 it is and I will try to remind you on both those scores  
35 throughout the cross-examination.

36 MS. KATZ: Mr. Stubchaer, I just wanted to make it  
37 clear also that if someone wanted to direct a question to a  
38 particular person, they could also do that.

39 MR. STUBCHAER: They can do that, but the way we  
40 have permitted this is, if a person doesn't have the  
41 answer, someone else can answer for that person.

42 MS. KATZ: Right.

43 MR. STUBCHAER: Yes, sir.

44 MR. CREGER: I thought I read in the instructions  
45 that all parties were going to go through their

1 presentations first, like PG&E next, and then the cross-  
2 examination. I do not have my cross-examination  
3 information with me. I can't carry it all at one time.

4 MR. STUBCHAER: The cross-examination follows the  
5 direct testimony, but we go through all the parties before  
6 we hear rebuttal testimony, and if you can bring your  
7 materials tomorrow morning, I am sure that can be  
8 accommodated.

9 Are you ready, Mr. Moss?

10 MR. MOSS: Mr. Stubchaer, I guess I am as ready as I  
11 can be given the fact that we were just handed Mr. Yates --

12 MR. STUBCHAER: I will specify that on any materials  
13 which you were just handed, you can come back tomorrow and  
14 resume cross-examination on that.

15 MR. SOMACH: Again, for the record, all the  
16 information that was presented was in the EIR and I trust  
17 that Mr. Moss, on behalf of PG&E, has reviewed the EIR. To  
18 the extent it is there, I would like to encourage him to  
19 ask questions from that document.

20 MR. STUBCHAER: I will still give him the courtesy  
21 of coming back tomorrow.

22 CROSS-EXAMINATION

23 by MR. MOSS:

24 Q Most of PG&E's questions, I think, are directed to  
25 Mr. Hannaford.

26 Mr. Hannaford, are you aware that the storage  
27 reservoirs that the applicants are seeking to secure  
28 consumptive storage rights are part of the El Dorado  
29 project, a FERC licensed project?

30 MR. HANNAFORD: A Yes, I am.

31 Q Are you aware that FERC has the exclusive  
32 jurisdiction over the operation of federally licensed  
33 hydroelectric projects?

34 A Yes.

35 Q Are you aware that PG&E cannot take any action  
36 impacting power generation without FERC's permission?

37 A Yes.

38 Q Are you aware that a license amendment is required  
39 before project operations that impact power generation can  
40 be brought into effect?

41 A Yes.

42 Q Does the applicant, I will refer to you jointly, own  
43 or have any interest in the reservoirs in question, to your  
44 knowledge?

45 A No.

1 MR. SOMACH: These questions have actually been  
2 asked and answered. I asked all these questions on direct,  
3 but go ahead.

4 MR. STUBCHAER: We are fairly liberal in our cross-  
5 examination.

6 MR. MOSS: Q Does the applicant envision under any  
7 circumstances any control over these reservoirs?

8 A No.

9 Q Does the applicant envision it will ever have access  
10 to these reservoirs?

11 A No.

12 Q Now, you recognize the importance, of course, of an  
13 agreement between the applicant and PG&E as far as making  
14 this project a viable project; is that correct?

15 A Yes.

16 Q And as far as you are aware, is such an agreement  
17 either forthcoming or about to be forthcoming?

18 MR. SOMACH: That's probably a better question to be  
19 posed to Mr. Reeb or Mr. Alcott, who are involved in the  
20 negotiations with PG&E.

21 MR. STUBCHAER: Yes. As I said before, any of  
22 these questions can be answered by the best qualified  
23 person.

24 MR. REEB: Could you repeat the question, please?

25 MR. MOSS: Q As far as you are aware, is there an  
26 agreement either forthcoming or within the next reasonable  
27 future about to be forthcoming with PG&E that would allow  
28 the applicant's impacts on PG&E's licensed projects?

29 MR. REEB: A Yes.

30 Q What is the basis for that?

31 A The basis for that response is the fact that  
32 representatives from PG&E Company, El Dorado Irrigation  
33 District and El Dorado County Water Agency have met on  
34 numerous occasions since the latter part of 1989 to discuss  
35 the proposed project before the State Board today and to  
36 discuss the potential impacts and potential operational  
37 requirements may have to be included in any agreement  
38 between PG&E, El Dorado Irrigation District and the County  
39 Water Agency.

40 Q As far as you are aware, have those discussions  
41 resulted in a draft agreement of any type?

42 A No, that was not your question.

43 Q Well, would such an agreement be presented to this  
44 Board as the Board has requested during the pendency of  
45 these applications?

1 A Could you define what pendency of applications means  
2 for me? It's the Agency's intent to enter into such  
3 agreement prior to the issuance of permits, but that, of  
4 course, depends upon the intent of the PG&E Company.

5 Q And if, for whatever reason, the parties were unable  
6 to reach such an agreement, would that mean that the  
7 applications would be withdrawn?

8 MR. SOMACH: Those are kind of legal conclusions.  
9 The premise here is that we will agree to a term which  
10 would provide that we could not interfere with PG&E's  
11 operation absent an agreement. What would happen absent an  
12 agreement, I submit, would be speculative at this time.

13 Our intention, however, is to attempt to reach an  
14 agreement with PG&E, and unless Mr. Moss tells me that they  
15 are simply not going to sit down and talk to us, I have no  
16 reason to believe we won't pursue that.

17 MR. REEB: A I can further respond to that question  
18 that in my opinion the applications would not be withdrawn  
19 because they provide the opportunity to divert water from  
20 Folsom Reservoir which would not have a negative impact on  
21 project 184.

22 MR. MOSS: Mr. Chairman, if I may make the comment,  
23 this is exactly the reason why PG&E made its motion earlier  
24 that, in fact, until such an agreement exists, at least as  
25 far as the part of the application that deals with PG&E's  
26 project, there is no project. There may be other parts  
27 that would exist independently.

28 MR. STUBCHAER: The analogy was made to define the  
29 right of way before you have the project license or  
30 afterwards, so which comes first?

31 MR. MOSS: Q Returning, I believe, to Mr.  
32 Hannaford, you mentioned the 1919 contract between the  
33 predecessors of PG&E and El Dorado Irrigation District.  
34 Are you familiar with this contract?

35 MR. HANNAFORD: A Yes, I am.

36 Q Are you aware that in Article XI of the contract  
37 there is a condition and I can --

38 MR. SOMACH: Objection. This goes to some legal  
39 issues associated with PG&E's allocations that somehow our  
40 having an application here is a breach of that contract.  
41 That's not a matter, I don't believe, that is properly  
42 before the State Water Resources Control Board, and if PG&E  
43 feels El Dorado Irrigation District or El Dorado, in any  
44 way, is breaching that contract, we don't invite it, but we  
45 are willing to deal with it in the Superior Court.

1 MR. STUBCHAER: Is that where you are leading?

2 MR. MOSS: No, sir. Where I am leading, I believe,  
3 is that since the applicants put this contract, if you  
4 will, into controversy, they have to be able to explain  
5 their interpretation of it. Certainly, their project  
6 relies very significantly on this water being available.

7 Now, if PG&E believes that a part of this agreement  
8 would, in fact, prevent them from requesting additional  
9 water, we believe that's a very relevant fact that should  
10 be before the Board, and we are not asking that the Board  
11 make any kind of finding or holding that they are in  
12 breach, but the information as to what is contained in the  
13 agreement is a fit subject for cross-examination.

14 MR. STUBCHAER: Ms. Katz, would that follow the  
15 category, would any other water rights holder be damaged?

16 MS. KATZ: Well, that's part of it. I was a little  
17 concerned about the questions they way they have been  
18 asked. We are asking a hydrologist to make  
19 interpretations, legal interpretations, of a contract which  
20 I think goes beyond his expertise.

21 But, if I am missing something as to the purpose of  
22 it, other than there is a dispute regarding what the  
23 contract means and whether there may be a breach of the  
24 contract, those issues aren't a subject of this hearing.

25 MR. STUBCHAER: Right.

26 MR. MOSS: First of all, I respectfully point out  
27 that much of the sum and substance of Mr. Hannaford's  
28 direct testimony goes to the various sources of supply,  
29 including this agreement and others which he has  
30 interpreted.

31 Now, we are not asking him for a legal  
32 interpretation, but we are asking, how does he rely  
33 basically on these being reliable sources that would, in  
34 fact, provide the water he is claiming they would?

35 MR. SOMACH: Well, not to answer the question,  
36 because I want Mr. Hannaford to answer with respect to what  
37 he relied upon, but I don't believe Mr. Hannaford said he  
38 relied upon the 1919 agreement to determine the capacity of  
39 those reservoirs or how they were operated. He took a look  
40 at studies to do that.

41 Is that accurate, Mr. Hannaford?

42 MR. HANNAFORD: We do have records of reservoir  
43 releases, reservoir storage and diversions.

44 MR. SOMACH: I believe the only reference he  
45 actually made to the 1919 agreement is to the water that is

1 sold to El Dorado Irrigation District under that agreement,  
2 and he merely did that as background to explain the base  
3 supply upon which these applications were built.

4 If PG&E contests that we even have that base supply,  
5 again I guess that's a matter for some litigation, but  
6 beyond that, that contract and any disputes arising out of  
7 that, but I hate to hear that there are so many disputes,  
8 but I mean this is not the forum to start arguing that that  
9 contract means.

10 MR. STUBCHAER: It is not the subject of this  
11 hearing, that's true.

12 MR. MOSS: Well, can I ask, for instance, whether  
13 the applicants are proposing to modify or amend the 1919  
14 contract agreement?

15 MR. SOMACH: We are not.

16 MR. ALCOTT: No.

17 MR. MOSS: Notwithstanding the earlier answer that  
18 you intend to enter into an agreement with PG&E to allow  
19 changes to the substance of what the 1919 agreement --

20 MR. SOMACH: Again, these are legal matters. We  
21 intend to enter into an agreement with PG&E. We don't  
22 believe that agreement has anything to do with the 1919  
23 agreement.

24 MR. MOSS: Of course, PG&E believes it has  
25 everything to do with the 1919 agreement in terms of water  
26 supply.

27 MR. SOMACH: We will just state that as our  
28 prospective legal positions.

29 MR. MOSS: Q Let me go back to the hydrology issue  
30 regarding changes in flows; what would the applicant do if,  
31 for instance, PG&E did not make its so-called normal  
32 releases?

33 MR. HANNAFORD: A In the analysis of the historic  
34 data, we went to one of the other EID sources and took  
35 water from that source temporarily until the flow was  
36 restored.

37 Q So, there is no other way of diverting the water if  
38 PG&E does not make the release?

39 A That's correct with regard to releases made from the  
40 reservoir.

41 Q You are aware, of course, or are you aware of the  
42 current condition that was the aftermath of the Cleveland  
43 fire and the impacts on the operation of the El Dorado  
44 project?

45 A Yes.

1 Q And in other unfortunate and unpredictable  
2 situations like that, what would the applicants do in terms  
3 of a long-term supply of water if, in fact, the El Dorado  
4 Canal was not available?

5 A If the El Dorado Canal were not available on a  
6 temporary basis like it is in the aftermath of the  
7 Cleveland fire, water would be taken from other El Dorado  
8 Irrigation District sources in order to make up the  
9 deficiency.

10 MR. SOMACH: Mr. Alcott, could you answer that?

11 MR. ALCOTT: A Maybe using the Cleveland fire as an  
12 example, I can briefly describe what we have done in  
13 response to that condition. As you know, with the Forebay  
14 outage, we have lost about 35 to 37 percent of our annual  
15 supply. In response --

16 MR. SOMACH: I am not sure Mr. Stubchaer knows about  
17 that outage. It might be good to describe that just as a  
18 preface to your comments.

19 A Last October the Cleveland fire destroyed 20  
20 somewhat thousand acres in the El Dorado National Forest  
21 and with it a good portion of PG&E's Canal, and in  
22 particular, some of the wooden flume structures. That  
23 canal, as you know, is the source of supply for both the  
24 powerhouse and to El Dorado Irrigation District's system  
25 out of the Forebay.

26 Once the fire occurred, the District was faced with  
27 not having one of its key eastern supply sources, and in  
28 order to make the system work, we have installed 1.1  
29 million dollars worth of pumping stations and \$200,000 of  
30 associated piping to allow us to bring water from Sly Park  
31 Reservoir uphill to the power plant service area. In  
32 essence, what we are doing, we are drawing more heavily  
33 than normal on Sly Park storage to meet the full needs of  
34 the eastern service area.

35 And the one million that we have spent on pumps was  
36 a permanent improvement in the event there was an  
37 occurrence in the future.

38 In response to our circumstances, a petition to the  
39 Bureau of Reclamation for extra supply out of Folsom Lake  
40 was granted so we could operate our Folsom facility at a  
41 rate higher than normal.

42 MR. MOSS: Q Turning to the testimony about the  
43 Hazel Creek tunnel, Mr. Hannaford, you said that you did a  
44 study trying to approximate in the future the impacts of  
45 the 1976-77 drought, and that you concluded that there

1 would be a need for an additional 3300 acre-feet of water  
2 diverted through the Hazel Creek tunnel; is that correct?

3 MR. HANNAFORD: A That would be only at the year  
4 2,000 level. It is intended that the White Rock project be  
5 completed by 1997, so there wouldn't be the need for that  
6 3,000 acre-feet. The 3,000 acre-feet would only be  
7 required during a season like 1977 and the probability of  
8 having another season like the 1976-77 drought at the year  
9 2000 level of demand is very very slim. It is very  
10 unlikely that any water would be required before the White  
11 Rock project is built.

12 Q Well, was 1989 as dry a year as 1977?

13 A No, it wasn't.

14 Q Yet, am I not correct in stating that El Dorado  
15 Irrigation District diverted an additional approximately  
16 5,000, or a little bit under that, acre-feet through the  
17 Hazel Creek tunnel because of shortages in Sly Park  
18 Reservoir?

19 A Well, you bring up an interesting point. There were  
20 5,000 acre-feet taken under an emergency situations in  
21 which El Dorado compensated PG&E for the water.

22 Interestingly enough, that water was taken during  
23 the winter of 1989, and before the end of the winter there  
24 was enough rain to fill and spill Sly Park Reservoir.

25 Q How does that impact the fact that in the year that  
26 was a dry year but not, as I understand it, anywhere near  
27 as dry as 1976-77, an additional 5,000 feet were needed?

28 A It turns out that 5,000 acre-feet additional supply  
29 was not needed. The reservoir filled and spilled.

30 Q So that you don't believe that that calls into  
31 question your call of 3300 as a true maximum that would be  
32 needed under the drier conditions?

33 A The 3300 is for the year 2000 level of demand.

34 Q I have a couple of questions. Actually, I will ask  
35 the first one of Lisa Larrabee relating to your testimony  
36 on recreational impacts, and in your written testimony you  
37 state that the -- and I will quote here -- *Implementing El*  
38 *Dorado project would reduce daily hydropower releases from*  
39 *Chili Bar Reservoir by up to 52 minutes.*

40 And yet, in your oral testimony you said 40 minutes;  
41 which is correct?

42 MS. LARRABEE: A The 40-minute figure is correct.

43 MR. SOMACH: Do you want an explanation?

44 MR. MOSS: Q Yes, how did you arrive at that?

45 A Based on the hydrologic evaluation.

1 MR. YATES: Basically, the analysis in the EIR  
2 included a program level alternative that includes not just  
3 the El Dorado project, but the Folsom project, and that  
4 included the possibility of diverting water from that  
5 project upstream of Folsom Reservoir, up above even the  
6 Lotus reach at White Rock. So, that's why, if you add  
7 those flows in addition and then took them out of White  
8 Rock, you would decrease the hydropower pulse more, but  
9 that Folsom project isn't what is under consideration here.  
10 It is only the El Dorado project.

11 Q Would these changes have any impact on the ramping  
12 rates that are part of FERC's License 2155?

13 MR. YATES: Not that I know of. I assume those  
14 would be the same as they are, whatever the permit  
15 conditions are.

16 MR. REEB: A The answer is no.

17 Q They would not impact the ramping rate requirements?

18 A That's correct.

19 Q Mr. Yates, I believe, testified that in the analysis  
20 of the 71-year simulation there was no need to reoperate  
21 PG&E's historic operation; is that correct?

22 MR. YATES: A Yes.

23 Q And are you aware that in 1983 PG&E went from 5  
24 cubic feet per second fish release to a 50 cfs fish  
25 release, and that this, I would say from our standpoint,  
26 resulted in significant changes in the operation?

27 A I am aware of that and I would let Jack Hannaford  
28 give you more details, if you would like.

29 MR. HANNAFORD: A The basic data used in the  
30 analysis of the project included the correction for the  
31 change in fish release requirements at El Dorado diversion.

32 Q And are you aware that the California Department of  
33 Fish and Game is seeking in our relicensing even greater  
34 releases to be instituted, substantially greater?

35 A I don't know what those new releases are.

36 Q I may ask you on recross after their testimony about  
37 that because, again, I am calling into question whether in  
38 fact that simulation was accurate, if, in fact, the  
39 increased fish releases were not factored into it.

40 MR. SOMACH: Do you have specific fish releases in  
41 mind?

42 MR. MOSS: I will defer to some of the other parties  
43 here.

44 MR. SOMACH: The point is, we can all speculate  
45 there will be additional fish releases and I guess we could

1 speculate to a range of releases, but until such time as  
2 relicensing takes place and additional releases take place,  
3 the question of how speculative this type of information is  
4 just simply --

5 MR. STUBCHAER: It seems to me the question has  
6 been asked and answered. Did you take it into  
7 consideration in trying to find what the magnitude might  
8 be, is beyond cross-examination.

9 MR. MOSS: Q Does the applicant, again, intend to  
10 divert PG&E's fish release water?

11 A The studies didn't include that water.

12 MR. MOSS: That is the end of my questions for now.  
13 Thank you.

14 MR. STUBCHAER: You can come back in the morning on  
15 the other.

16 MR. MOSS: Thank you.

17 MR. STUBCHAER: Sacramento Municipal Utility  
18 District.

19 MR. O'BRIEN: I am Kevin O'Brien representing SMUD.  
20 Most of my questions are for Mr. Reeb, although I guess any  
21 of you should answer if you feel like it.

22 CROSS-EXAMINATION

23 by MR. O'BRIEN:

24 Q Mr. Reeb, have you had an opportunity to review the  
25 exhibits and testimony that were submitted by SMUD in this  
26 proceeding?

27 MR. REEB: A No, I have not.

28 Q But you are generally familiar, are you not, with  
29 the upper American River project which SMUD operates?

30 A Yes, I am, as a lay person. I am not an engineer.

31 Q As I understand, your proposed White Rock project,  
32 the basic concept is that El Dorado, and when I use that  
33 term El Dorado, I am referring to both El Dorado Irrigation  
34 District and the County Water Agency, El Dorado would be  
35 diverting water out of White Rock penstock which is a SMUD  
36 facility; is that correct?

37 A Yes.

38 Q And that water, if it were not diverted out of White  
39 Rock penstock would otherwise go down the penstock and  
40 through the White Rock powerhouse; is that correct?

41 A Yes.

42 Q So, I guess it is fair to say, is it not that if the  
43 White Rock project operates as intended, it will at least  
44 in general terms operate to decrease the amount of power

1 that SMUD can generate from White Rock powerhouse. Is that  
2 a fair general statement?

3 A I would say that's not necessarily the case. I  
4 believe an operational schedule can be developed to  
5 withdraw water at the penstock that would not impact power  
6 generation at the White Rock powerhouse.

7 Q What would be the elements of that operational  
8 scheme?

9 A Those are the subject of discussions at this point  
10 in time and truly rely as much upon the forthcoming  
11 analysis and data by SMUD as much as I would be able to  
12 answer specifically.

13 In general, they would involve diversions that occur  
14 when the power plant is not running.

15 Q These would be diversions by El Dorado that would be  
16 timed to correspond to situations where the power plant was  
17 not running?

18 A That would be the simplest case, yes.

19 Q And is it your testimony that the Irrigation  
20 District would be willing to agree to such constraints on  
21 its diversions from the penstock?

22 A I think that's a subject of negotiation between SMUD  
23 and El Dorado.

24 Q You seem to be optimistic that a set of operating  
25 conditions can be worked out which would eliminate or at  
26 least greatly reduce the power impacts on SMUD. I guess I  
27 am just wondering whether El Dorado as a matter of policy,  
28 and this is perhaps a question for Mr. Alcott as well, as a  
29 matter of policy is willing to submit to imposing  
30 operational conditions which to the extent feasible  
31 minimize power impacts on SMUD.

32 MR. SOMACH: Let me just interrupt for a minute.  
33 There are two issues here. The first is the question of  
34 impact and impact will be addressed in one or two ways.  
35 The first way is compensation, the second way is avoidance.

36 The subject of the negotiations will take that two  
37 ways and decide the best blend, so to speak, that would  
38 address problems associated with utilizing the White Rock  
39 penstock. In other words, it may be either total avoidance  
40 or total compensation, or a blend of the two.

41 All the witnesses are going to be able to do is  
42 respond, it depends, it might be, it could be. It really  
43 depends upon what we do when we sit down and negotiate. To  
44 force the witnesses to come up with a concrete answer one

1 way or the other forecloses the free exchange of discussion  
2 in the negotiations.

3 Yet, they can respond, I think generally factually  
4 that it could happen one way or it could happen another,  
5 but to bind them as a matter of policy here, I think would  
6 be inappropriate.

7 MR. STUBCHAER: I was wondering if it is beyond the  
8 scope of direct testimony.

9 MR. O'BRIEN: May I respond briefly? Mr. Somach is  
10 right to the extent he points out there are two issues.  
11 One is compensation and the other is permit conditions, and  
12 we recognize that the issue of compensation is an issue of  
13 contract interpretation, possibly further negotiation  
14 between the parties, and we do not intend to request this  
15 Board to enter any order that deals with how much we are to  
16 be compensated.

17 However, under Water Code Section 1253, this Board  
18 has the authority and, in effect, the duty to impose  
19 reasonable permit conditions as necessary to protect the  
20 public interest.

21 The gist of SMUD's testimony is that your project is  
22 a very critical component of its overall power generation  
23 system, and we think it is very germane to this proceeding  
24 that we explore El Dorado's position with respect to  
25 reasonable conditions on the operations of this White Rock  
26 project, and that those kinds of conditions would be  
27 appropriate to include in a water right permit.

28 MR. REEB: If you would like to repeat the question,  
29 I believe --

30 MR. STUBCHAER: Just a moment, please. I will stop  
31 the clock.

32 All right, Mr. O'Brien, to the extent that the  
33 witnesses can give you a general answer, that's fine, but  
34 when you start going back and forth as to what they might  
35 or might not do in more specific detail, that might be  
36 beyond the scope of cross-examination.

37 MR. O'BRIEN: Q You stated, I believe, that you  
38 felt that a set of operating conditions could be put  
39 together which I believe you eliminated any power impacts  
40 on SMUD's White Rock power project. Am I correct?

41 MR. REEB: A That's one scenario that could occur  
42 under an agreement between SMUD and El Dorado.

43 Q Well, it wouldn't have to be through an agreement,  
44 it could be through operating conditions imposed by this  
45 Board; isn't that right?

1 A I can't speak to the Board's legal ability to impose  
2 conditions as to that.

3 Q In any event --

4 MR. STUBCHAER: You can have your own witness  
5 testify to that. I'm sure he will.

6 MR. O'BRIEN: Q Is it the policy and position of El  
7 Dorado that reasonable operating conditions should be  
8 imposed on the White Rock project which will minimize to  
9 the extent feasible power supply impacts on the SMUD  
10 facilities downstream?

11 MR. REEB: A It is the intent of the El Dorado  
12 County Water Agency to enter into an operations agreement  
13 with SMUD based upon provisions of the 1957 agreement  
14 between SMUD and County of El Dorado, and the 1961  
15 supplemental agreement between SMUD and the County of El  
16 Dorado and the El Dorado County Water Agency.

17 Q I am not sure you got to my question, sir. What  
18 would be the purpose of that agreement?

19 A I would not speculate at this time because that's  
20 the subject of negotiations between SMUD and the El Dorado  
21 County Water Agency and the El Dorado Irrigation District.

22 Q Are you familiar or are any of the panelists  
23 familiar with how the Slab Creek Reservoir is operated in  
24 general terms?

25 A I defer that to Mr. Hannaford.

26 Q Can you just briefly describe that for us?

27 MR. HANNAFORD: A Slab Creek Reservoir operates as  
28 a forebay for the White Rock power plant.

29 Q And currently, does SMUD attempt to maintain the  
30 level of that reservoir at a high level throughout the  
31 summer, or does it as a matter of policy draw the reservoir  
32 down?

33 A It maintains it at a high level for hydropower  
34 generation.

35 Q Do you know what that is, sir?

36 A To maintain maximum head on the water.

37 Q In Mr. Reeb's direct testimony he indicated that the  
38 hydroelectric generating schedule of SMUD and PG&E are a  
39 very near fit, I believe.

40 MR. REEB: A That is not correct. The record was  
41 PG&E's operations and EID operational requirements as  
42 projected.

43 Q You said the hydroelectric generation schedules of  
44 PG&E were a very close fit with the proposed operations  
45 under this project; is that correct?

1 A That's correct.

2 Q But to come to the conclusion that the hydroelectric  
3 generation schedule of SMUD is not a very close fit with  
4 your proposed operations under this project?

5 A I don't think that I have formed an opinion or made  
6 a statement to that effect, no.

7 Q Mr. Hannaford, do you have anything to add to that?

8 MR. HANNAFORD: A The intention is to acquire  
9 through an operating agreement a small amount of regulation  
10 on Slab Creek Reservoir. The amount of withdrawal during a  
11 day would decrease the reservoir level in Slab Creek  
12 Reservoir by less than a foot, the amount of withdrawal by  
13 El Dorado.

14 Q This is on average?

15 A That's the total amount of water taken during a day  
16 by the time we get out past 2020 requirements.

17 Q You gave me the figure of a foot. Is that an  
18 average over the course of a year? In other words, in  
19 periods like July, could that number drop lower than a  
20 foot?

21 A I don't think so because SMUD would be operating the  
22 rest of the system to keep water coming down into that  
23 reservoir.

24 Q Let me make sure I understand. We have heard a lot  
25 of testimony today that this proposed project would not  
26 change any of the operations of various PG&E reservoirs.  
27 We are all in agreement on that, I assume.

28 What I am hearing now is the proposed project would  
29 change the operating of SMUD's Slab Creek Reservoir. Is  
30 that correct?

31 A SMUD would be putting less water through White Rock.

32 MR. REEB: It wouldn't change the operation of the  
33 reservoir. It would change potentially the level of the  
34 reservoir.

35 Q I am having trouble understanding the difference.

36 MR. SMITH: The distinction that should be made  
37 between PG&E facilities and SMUD facilities is the  
38 existence of the 1957 and 1961 agreements with respect to  
39 the SMUD facilities. There is no such agreement or  
40 agreements with respect to the PG&E facilities.

41 The 1957 and 1961 agreements which Mr. O'Brien is  
42 free to ask about or present evidence on in terms of the  
43 fact that what it does is it specifically allows for the  
44 utilization of the SMUD facilities for El Dorado water  
45 subject to some agreements on compensation and use of those

1 facilities, but that's the variable and that's why the two  
2 are dealt with differently; that is, PG&E and SMUD.

3 MR. O'BRIEN: Q I appreciate that clarification.

4 I believe you said a minute ago, Mr. Hannaford, you  
5 are attempting to negotiate an operating agreement with  
6 SMUD relating to the proposed change in operation of the  
7 Slab Creek Reservoir; is that correct?

8 MR. HANNAFORD: With regard to operation of White  
9 Rock, yes.

10 Q I guess this is a question perhaps to Mr. Reeb.  
11 Would he be willing to stipulate to a permit condition  
12 which required the establishment and execution of an  
13 operating agreement covering this reoperation of the Slab  
14 Creek Reservoir?

15 MR. REEB: A I believe the answer is yes. I mean,  
16 we have indicated that there needs to be an operations  
17 agreement in order to put into effect the provisions of the  
18 1957 and 1961 agreements.

19 Q I'm glad to hear you say that.

20 A We have been seeking to do that, by the way, since  
21 September of 1989 when we first met with the former SMUD  
22 General Manager.

23 Q I understand there have been lengthy negotiations on  
24 that issue and SMUD, too, is hopeful that that agreement  
25 can be finalized. I just am glad to get clarification of  
26 that because I did look at the proposed permit terms which  
27 Mr. Somach circulated this morning. I think it was Exhibit  
28 71 in particular that related to SMUD, and I didn't see any  
29 reference specifically to an operations agreement, but as I  
30 understand now, you would be willing to stipulate to that  
31 in a permit term?

32 MR. SOMACH: Let me indicate since I offered this,  
33 if that last sentence needs to be clarified, my  
34 understanding with respect to right of access is that that  
35 right of access was not going to be forthcoming absent some  
36 idea of when we got access what we were going to do there,  
37 which I guess is an operations agreement.

38 So, if you want to suggest, and that's, of course,  
39 why we submitted them early on in this hearing -- if we  
40 might be able to eliminate the need for you even to  
41 testify.

42 MR. O'BRIEN: Well, then I would like to have Mr.  
43 Reeb refer to SMUD's exhibits, and I have got an extra copy  
44 here in case you don't have them.

45 MR. SOMACH: Which exhibit number?

1 MR. O'BRIEN: Q I believe we are referring to Mr.  
2 Jobson's testimony which was Exhibit 9, and specifically,  
3 Mr. Reeb, I would like to direct you to page 8 starting at  
4 line 22 of Mr. Jobson's testimony, which is SMUD Exhibit 9.

5 MR. SOMACH: Where are you referring to?

6 MR. O'BRIEN: Q Beginning on line 22, page 80, SMUD  
7 Exhibit 9, Mr. Jobson in that paragraph, beginning at line  
8 22 and continuing to line 14 of the following page sets  
9 forth some fairly specific measures which SMUD would like  
10 to see go into an operating agreement.

11 I would just like to take a moment since you haven't  
12 had a chance to review the SMUD testimony previously, I  
13 would like to have a moment and walk through these with you  
14 and find out if there's any problems from El Dorado's  
15 standpoint with any of those.

16 MR. SOMACH: Mr. Stubchaer, I don't see anything  
17 wrong with having Mr. O'Brien point out that testimony to  
18 Mr. Reeb and Mr. Alcott, have them take a look at it and  
19 allow us to go back and talk about it, and think about the  
20 provisions, but to ask us to, in essence, respond in a way  
21 of, I guess, something along the line of a stipulation on  
22 this type of notice would be inappropriate in this type of  
23 hearing.

24 MR. REEB: That would have been my response.

25 MR. O'BRIEN: I'm simply trying to determine, Mr.  
26 Stubchaer, whether there is any glaring problems with any  
27 of these proposed permit terms, and I recognize that some  
28 of these things may require further analysis, but this is  
29 my one shot at these folks, and if there is some major  
30 problem with this laundry list that we have put in our  
31 testimony, I would like to hear it now.

32 And if Mr. Somach wants to come back in his rebuttal  
33 case and put on some additional evidence based on my  
34 analysis, I don't have a problem with that.

35 MR. STUBCHAER: It sounds to me like you are  
36 working toward a solution, which I encourage. I think it  
37 is beyond the scope of cross-examination except as it  
38 relates to these permit terms which have been introduced  
39 today.

40 I will say this, that since these were introduced  
41 today, if you want to come back tomorrow and cross-examine  
42 on these, I will give you that opportunity. That may give  
43 you more time and them more time for analysis.

44 MR. O'BRIEN: You want me to move on in terms of  
45 this particular line of questions?

1           MR. STUBCHAER: I will allow you to move on, but I  
2 am not going to try and force a yes or no stipulation  
3 answer right now.

4           MR. SOMACH: Moreover, Mr. Stubchaer, I just want to  
5 -- both agencies involved are public agencies. People that  
6 are testifying are the General Managers of those agencies,  
7 yet the ultimate determination of what can or can't be  
8 stipulated to must be run by the decision makers, the  
9 elected officials of both the El Dorado Irrigation District  
10 as well as the El Dorado County Water Agency, and again, I  
11 don't mind Mr. O'Brien here or separately and apart saying,  
12 hey, why don't you focus on page 8 through 9 of the  
13 testimony, and we would like to talk about a stipulation  
14 with respect to those types of issues, and we will take a  
15 look at it.

16           I think it is wholly another thing trying to put  
17 these folks on the spot when they can't commit in any  
18 event.

19           Anyway, he is free to put on testimony to tell the  
20 Board, look, we think these ought to be part of the terms  
21 and conditions, and I can cross-examine and ask about that,  
22 but to try to put them on the spot with respect to this  
23 type of testimony is just inappropriate.

24           MR. STUBCHAER: I think we are having a dialogue  
25 which is fine, and Mr. O'Brien may be right. He says this  
26 is the only opportunity during this hearing to do this.

27           MR. O'BRIEN: I will stipulate for purposes of the  
28 record that the answers and the positions stated here are  
29 not binding on the Board of these public agencies. I  
30 understand that. I am trying to get at practical problems  
31 that may or may not be associated with the list of  
32 conditions that I am proposing.

33 Q           So, with that in mind, Mr. Reeb and perhaps Mr.  
34 Alcott, let me just quickly go through this list of  
35 proposed elements of an operating agreement starting with -

36 -

37           MR. STUBCHAER: Excuse me, Mr. O'Brien --

38           MR. JACKSON: Mr. Stubchaer, I would like to object  
39 to the relevance of this particular mechanism. It seems to  
40 me they are trying to work out an operating agreement in  
41 the middle of the hearing. We have all argued that this  
42 hearing was premature. It seems to me that there must be a  
43 back room in this building where they could do this.

44           Maybe we could simply go on with the hearing and  
45 they could adjourn and come back and tell us what the flows

1 are going to be so we could get on with what's going on  
2 here.

3 MR. O'BRIEN: I would love to work out an agreement  
4 on these issues, but that may not be possible. It may fall  
5 on this Board and Hearing Officer to come up with terms and  
6 conditions for this permit, and the purpose of this  
7 testimony now --

8 MR. STUBCHAER: This isn't testimony, that's the  
9 problem. You can present that testimony. This is cross-  
10 examination.

11 MR. GALLERY: May I be heard a minute?

12 MR. STUBCHAER: Let Mr. O'Brien respond.

13 MR. O'BRIEN: The only thing I am trying to elicit  
14 here is the practical on-the-ground problem with these  
15 conditions, and I believe that is properly within the scope  
16 of cross.

17 MR. GALLERY: Mr. Stubchaer, speaking for Amador  
18 County, we are very interested to know what some of these  
19 issues are that have to be resolved in these contracts  
20 between SMUD and El Dorado and between PG&E and El Dorado.  
21 It seems that will tell us something about what the project  
22 can turn into, and if nobody talks about what the  
23 differences are, nobody talks about what the terms of an  
24 agreement might or might not be, we are just in the dark  
25 here and I think it is very valuable to hear some of the  
26 problems and the issues that these parties have got to work  
27 on to see how they might affect whatever this project turns  
28 out to be.

29 So, I would be in support of allowing Mr. O'Brien to  
30 proceed and explore these issues and develop them as much  
31 as we can here. I think it is time well spent.

32 MR. STUBCHAER: Go ahead, Mr. O'Brien.

33 MR. O'BRIEN: Q With reference to subparagraph (a)  
34 on page 8 of Mr. Jobson's testimony, that proposes as one  
35 element of an operating agreement to implement all feasible  
36 measures to avoid energy and capacity impacts to UAR from  
37 El Dorado's permitted diversion, particularly during hours  
38 when SMUD is generating with the White Rock power plant to  
39 meet capacity needs and during SMUD's critical dry periods.

40 From an operational standpoint, if that were a part  
41 of the permit for this project, do you see any significant  
42 adverse impacts to your ability to use this water for  
43 consumptive purposes, and I guess I am directing it  
44 primarily at Mr. Reeb.

1 MR. REEB: A It is a lot more complicated than  
2 that, Mr. O'Brien. Your subparagraph (a) goes to issues  
3 raised in the 1957 and 1961 agreements, and I will repeat  
4 this is not the appropriate time and place to negotiate the  
5 provisions of an agreement. Implementing all feasible  
6 measures to avoid energy and capacity impacts is an option  
7 which we would be open to exploring.

8 However, the 1957 agreement also provides us the  
9 option of operating so as to incur energy and capacity  
10 impacts so long as SMUD is held whole financially.

11 Q All right, good enough. How about (b), to implement  
12 all necessary measures to insure the safe and reliable  
13 interconnection of El Dorado and SMUD facilities?

14 A Yes.

15 Q Yes, meaning you would be willing to include that in  
16 a provision?

17 A Yes.

18 Q (c) to limit diversions from the White Rock penstock  
19 to 100 cfs as specified in the 1961 agreement.

20 A That, again, is more complex than the question for  
21 the following reason. To the extent that we avoid energy  
22 and capacity impacts under your subparagraph (a), there may  
23 be a necessity to operate diversions above 100 cfs.

24 Q So that, for example, if we were to work out an  
25 operational scenario where perhaps you were to divert  
26 during certain hours, perhaps you could go over the 100  
27 cfs?

28 A That is correct.

29 MR. SOMACH: To just make a point, when they respond  
30 they are responding to what they think might be appropriate  
31 in an agreement reached with SMUD. That doesn't  
32 necessarily equate to an agreement to stipulate in the  
33 context --

34 MR. STUBCHAER: No, that was already stated. Mr.  
35 O'Brien said he took the answers in that context.

36 MR. O'BRIEN: Q And finally, (e) to install flow  
37 meters at all points of diversion so the actual amount of  
38 water can be accurately measured.

39 MR. REEB: A Yes, that's our intent.

40 Q Thank you. As I indicated earlier, Mr. Jobson goes  
41 on to discuss compensation issues. We do recognize  
42 compensation issues are not appropriately before the Board.  
43 It looks like we are actually fairly close on most of these  
44 issues.

45 A I believe we are.

1 Q I would like to refer you, Mr. Reeb, to page 6 of  
2 your testimony.

3 MR. STUBCHAER: You have one minute. I stopped the  
4 clock during some of these discussions, but do you need  
5 more time?

6 MR. O'BRIEN: I would say another three or four  
7 minutes.

8 MR. STUBCHAER: All right.

9 MS. KATZ: To which exhibit are you referring Mr.  
10 Reeb to now? There were two.

11 MR. O'BRIEN: The original testimony.

12 Q Now you refer in that second full paragraph --  
13 actually, let me move on. I think we have discussed these  
14 agreements enough.

15 Turning your attention to page 8 of your testimony,  
16 Mr. Reeb, the second full paragraph, you indicate that the  
17 combined safe yield from these rights would be 17,000 acre-  
18 feet per year. That's the figure you have utilized for  
19 planning purposes for the White Rock project component of  
20 this overall project; is that correct?

21 MR. REEB: A That's the combined safe yield based  
22 on a number of things, El Dorado project operation  
23 historically by PG&E, hydrology for the hydrological period  
24 of record, the demand schedules that have been projected  
25 for El Dorado Irrigation District out to the future, and  
26 that gives you that 17,000 acre-feet per year which might  
27 be available at White Rock.

28 Q And that's the number assuming that this project  
29 goes forward, that's the number that will be used for  
30 planning purposes within the County? Is that a fair  
31 statement?

32 A I believe that certain operational analyses  
33 conducted by Mr. Hannaford further quantify what that  
34 number -- in other words, is your question what do we  
35 intend under our projections to be the maximum withdrawal  
36 at White Rock, or --

37 Q I guess my question goes to the question Mr. Somach  
38 touched on, that this safe yield number, as I understand,  
39 is a little different from the safe yield numbers as we  
40 normally deal with them.

41 My question is, how safe is safe in this safe yield  
42 number? In other words, are you going to go out and build  
43 homes or is the County going to approve the building of  
44 homes based on an assumed safe yield of 17,00 acre-feet, or

1 is there another number floating around that is a more  
2 conservative number that would be used?

3 A No, I think that number is a number that can be used  
4 today. However, I'm sure you understand that the number of  
5 homes that could rely upon that will not be built in one  
6 year, but over the course of time between today and the  
7 year 2020, and that as information becomes available that  
8 number may be revised downward, and I would think, you  
9 know, again, I don't want to speculate, but FERC Project  
10 184 is subject to relicensing in hearings in 2002, and  
11 there could be changes as a result of those hearings that  
12 would require El Dorado to go back and recalculate what  
13 that number would be.

14 MR. STUBCHAER: I will give you one more question.

15 MR. O'BRIEN: Q Would El Dorado be willing to  
16 stipulate to the 17,000 acre-feet as a maximum ceiling on  
17 annual withdrawal from the White Rock penstock?

18 MR. SOMACH: Do you have an answer to that off the  
19 top of your head?

20 MR. ALCOTT: The quick answer is no.

21 MR. REEB: I couldn't anticipate a question like  
22 that, so I can't answer at this time.

23 MR. SOMACH: But we will consider that.

24 MR. O'BRIEN: That's all I have.

25 MR. STUBCHAER: Mr. Turner, how long will your  
26 cross-examination take?

27 MR. TURNER: Between 15 and 20 minutes.

28 MR. STUBCHAER: Mr. Turner, Bureau of Reclamation.

29 MR. TURNER: Jim Turner for the Bureau of  
30 Reclamation.

#### 31 CROSS-EXAMINATION

32 by MR. TURNER:

33 Q I think these first couple of questions would  
34 probably be addressed either to Mr. Alcott or Mr.  
35 Hannaford. I am not sure which one of you would prefer to  
36 answer. I will leave it up to you.

37 Are either of you aware of the water rights that the  
38 United States holds in connection with Silver Lake, Caples  
39 Lake, Aloha Lake and Echo Lake?

40 MR. HANNAFORD: A Yes.

41 Q Are those particular rights junior or senior to  
42 Application 5645?

43 A They are senior to 5645. I think they are 5618 or  
44 something.

1 Q Will your project interfere in any way with the  
2 implementation or exercise of those water rights?

3 A It's quite possible that it will.

4 Q Didn't you provide in your application that the  
5 period that you were seeking for use was November through  
6 August, November 1 through August 1?

7 A That's the period of diversion from storage or  
8 direct diversion. Periods of use might be from water  
9 released from storage.

10 Q What I am concerned about, isn't the American River  
11 deemed to be fully appropriated between October and July,  
12 or July through October, I mean? It seems to me the month  
13 of July you are specifying your application would seem to  
14 be a season when the water wasn't available, or how do  
15 those two relate?

16 A That was the date put on our application.

17 MR. SOMACH: The question of fully appropriated  
18 stream, of course, is one that was addressed by the State  
19 Board staff early on in the process. It was the subject of  
20 some legal opinions and discussion on legal issues.

21 The question of fully appropriated and how it works  
22 here is not a technical question, I don't think, in terms  
23 of hydrology, but rather, the relative rights and interests  
24 of the parties that are involved.

25 You are not going to get much more out of Mr.  
26 Hannaford in terms of the question, is this a fully  
27 appropriated stream.

28 Yes, I will tell you that our application is to  
29 cover a period of time in which the Board has otherwise  
30 determined that the stream is fully appropriated, that's  
31 correct, which required us then to make a showing to the  
32 State Board staff at least in order to have our  
33 applications accepted, that there was either a county of  
34 origin issue there or exception, or in the alternative,  
35 that rights of others who otherwise would be senior, in  
36 fact, were taken subject to the prior rights of El Dorado  
37 County to develop, and, in fact, the Bureau of Reclamation  
38 is one of those entities that has that type of limitation  
39 in its water rights, so it is really not a technical  
40 question.

41 It is really, I think, a legal question in terms of  
42 how those various water rights get interrelated. I just  
43 don't think Mr. Hannaford can answer your question any  
44 further than to say, yes, our appropriations cover areas  
45 that are designated as fully appropriated.

1 MR. TURNER: I thought it was an error and if you  
2 wanted to correct it --

3 MR. SOMACH: No, if you are more than happy to  
4 forgive your protest because of an error you made --

5 MR. TURNER: Q In looking at the application, I  
6 didn't notice that Folsom Reservoir was listed as point of  
7 rediversion. Did I miss it? Sly Park was mentioned, but  
8 was Folsom mentioned as a point of rediversion?

9 MR. HANNAFORD: A Folsom was added as a point of  
10 rediversion.

11 Q In one of your amended applications?

12 A Is that in an amended application?

13 MR. SOMACH: It was added as an amendment prior to  
14 noticing of these things. That should have been ion the  
15 materials that went out and I know it was, in fact, part of  
16 the notice that went out. It didn't increase the quantity  
17 of water at all. It just added a place of rediversion.

18 MR. TURNER: Q Now, let's start with Sly Park.  
19 Have there been any discussions or negotiations to indicate  
20 with respect to the terms and conditions of any agreement  
21 between the applicants and the Bureau with respect to the  
22 use of Sly Park or Folsom Reservoir?

23 MR. REEB: A Yes. We met on two occasions that I  
24 am aware of, not to mention numerous telephone  
25 conversations between yourself and Mr. Somach. The two  
26 occasions that we met were occasions in January and May of  
27 this year.

28 Q Well, I recall that we have met. The subject has  
29 come up. We have gone so far as to say there has to be an  
30 agreement. Have we discussed any terms and conditions,  
31 charges, anything like that to date?

32 A Yes, I believe we have discussed terms and  
33 conditions.

34 Q I will ask you to refresh my memory again.

35 A In fact, with respect to the prior line of  
36 questioning on the old Folsom powerhouse issue, Mr. Somach  
37 offered, you know, a term and agreement to recognize that  
38 and for us to compensate the Bureau based on any impacts  
39 that might occur on that prior right. That occurred both  
40 in January and May of this year.

41 Q Let's start with Sly Park. Are you proposing to use  
42 Sly Park as a further storage facility?

43 A That possibility could occur under an emergency  
44 condition and would be dependent upon the execution of a  
45 Warren Act contract with the Bureau of Reclamation.

1 Q Have you, in fact, requested as part of the  
2 application -- maybe I haven't seen the most up-to-date  
3 one, a diversion to storage, a rediversion to storage in  
4 Sly Park? That's why I wasn't sure how you were intending  
5 to use it.

6 MR. HANNAFORD: A It is indicated as a point of  
7 rediversion, not a point of diversion to storage.

8 Q And is that the same with Folsom or is Folsom  
9 addressed as point of further diversion to storage?

10 A I think that's down at the point of rediversion;  
11 isn't it?

12 MR. SOMACH: I believe that the applications deal  
13 with those two facilities merely as points of rediversion  
14 as opposed to for storage. Our discussions focused on the  
15 question of whether or not the Bureau would enter into a  
16 Warren Act contract if we determine at some later date we  
17 would like to restore water as opposed to merely rediverted  
18 there. Those discussions are at the infancy stage as far  
19 as I am concerned, and you indicated that the Bureau didn't  
20 have any per se problem with it and that that could be a  
21 subject of discussion later on.

22 MR. TURNER: The reason I am raising the question is  
23 that it is my understanding that there is a variance with  
24 the permit issued by the Board permitting rediversion and a  
25 permit permitting rediversion to storage.

26 So, if you do decide to utilize the facilities for  
27 storage, would it not be necessary to further amend or to  
28 seek --

29 MR. SOMACH: It would have to come back here. One  
30 of the problems that we have with the lot of what is being  
31 suggested here is we are not suggesting that if this  
32 project modifies that we wouldn't have to come back to the  
33 State Water Resources Control Board to obtain permission  
34 for the modifications.

35 What we have before us is a project, a defined  
36 project, and that's all we have before the Board as we sit  
37 here, and that's all we are asking to be permitted.

38 If we somehow modify that project, we certainly  
39 would have to come back here, and I believe we would have  
40 to do some additional environmental review to account for  
41 the modifications.

42 MR. TURNER: That's why I am specifically asking  
43 what is the project? Does it involve further storage in  
44 Folsom, further storage in Sly Park? I guess the answer I

1 am hearing is it does not include those elements at this  
2 point. Is that correct?

3 MR. REEB: A Yes.

4 MR. TURNER: Q Does the El Dorado project currently  
5 include storage of water in Sly Park Reservoir?

6 A No.

7 Q Does the El Dorado project currently include storage  
8 of water in Folsom Reservoir?

9 A No. It's the same question for Folsom.

10 Q Now, if the applicants are granted the permit they  
11 are requesting, would these permits reduce the quantity of  
12 water that would otherwise be stored by the Bureau of  
13 Reclamation in accordance with its water rights in Folsom  
14 Reservoir?

15 MR. HANNAFORD: A Yes.

16 Q And have you done any kind of analysis or  
17 investigation as to the extent to which that reduction in  
18 the supplies of water that would be available to the Bureau  
19 would affect its ability to meet Delta water quality  
20 standards, in-basin uses, et cetera?

21 A We have not studied the Bureau's operation.

22 MR. SOMACH: Mr. Yates, do you want to expand on  
23 that?

24 MR. YATES: A I described earlier that we looked at  
25 the changes that would occur at the inflow to Folsom  
26 Reservoir and evaluate it as best we could given the  
27 uncertainty I described in my testimony, what certain  
28 changes might occur in outflows in the CVP operations.

29 MR. STUBCHAER: Mr. Turner, I think that was in the  
30 material just handed out today. If you haven't had a  
31 chance to read it, it is understandable and you can go into  
32 it again tomorrow.

33 MR. TURNER: Q Mr. Yates, as I heard your testimony  
34 and as it was presented in your written testimony, in  
35 simple terms it seemed to be that the quantities of water  
36 that are being considered in connection with the flows and  
37 in the American River and the quantities of water being  
38 stored and released from the reservoirs are so minimal it  
39 is not going to have any kind of significant impact.

40 What I am concerned about is am I to assume from  
41 that, that it is a sort of first come, first served  
42 philosophy, you were able to get in early and so your  
43 impacts are going to be minor, but if something similar  
44 were to come up, would we then have to look cumulatively  
45 and put the burden on the second party?

1 MR. YATES: A We concluded that the direct impact  
2 of this project would be small, not in terms of flow, but  
3 they would be insignificant in terms of water quality or  
4 biological resources.

5 With respect to cumulative impacts, we reached  
6 different conclusions.

7 Q With respect to the cumulative impacts, are the  
8 applicants willing to assume any of the obligations that  
9 would otherwise have to be borne by the Bureau of  
10 Reclamation for meeting lower American River flows and  
11 Delta water quality standards that are impacted by the  
12 appropriation of water by the applicants?

13 MR. REEB: A Yes.

14 MR. SOMACH: That really is not a factual question.  
15 It really has got a lot loaded into it from a legal  
16 perspective. The answer that Mr. Reeb gave is the correct  
17 answer in that El Dorado does not want to in any way at all  
18 avoid its obligations to assist in meeting lower American  
19 River and Delta standards where appropriate.

20 The question is, I think, the way it was posed,  
21 whether or not El Dorado was willing to take on the  
22 Bureau's legal obligations, whatever they may be in that  
23 regard.

24 I want to clarify that we believe that we are  
25 subject to whatever the Board orders us to be subject to in  
26 meeting Delta and lower American River obligations. That  
27 may not be one on one identical to what the Bureau's  
28 obligations are.

29 MR. TURNER: Q Let me just ask one final question  
30 then. Do the applicants take any exception to the  
31 inclusion of standard term 91 in the permit which you are  
32 requesting?

33 MR. REEB: A Yes.

34 Q Yes, you do take exception?

35 A Yes.

36 MR. TURNER: I don't think I have any further  
37 questions. Thank you very much.

38 MR. STUBCHAER: Thank you, Mr. Turner. If you do  
39 have further questions on the terms that were distributed  
40 today, you may ask questions in the morning.

41 MR. TURNER: I appreciate that.

42 MR. STUBCHAER: We are not going to begin any  
43 further cross-examination this afternoon. We will resume  
44 at nine in the morning.

1           Does staff have any comments they want to make  
2 before we recess?  
3           All right, with that, we will recess until nine a.m.  
4           (Evening recess)  
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